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TRANSCRIPT OF PROCEEDINGS of the

SUBCOMMITTEE ON POLICE ADMINISTRATION AND LAW ENFORCEMENT

Relating to Narcotics

~~115 State Building~~
Los Angeles, California
May 27, 1958

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I N D E X

WITNESSES PAGE

E X H I B I T S

... A public hearing of the Assembly Interim Committee on Judiciary, Subcommittee on Police Administration and Law Enforcement, was convened at 10:00 a. m., Tuesday, May 27, 1958 in Room 115, State Building, in Los Angeles, California, Assemblyman George G. Crawford, Chairman, presiding ...

CHAIRMAN GEORGE G. CRAWFORD: The Assembly Judiciary Subcommittee on Law Enforcement Problems will now come to order. The members of the Committee who are present are Assemblyman Phil Burton, Assemblyman Bruce Allen, and I believe that Assemblyman Cap Weinberger is present and will be with us in a few moments. Other members have been delayed because of airline connections and will join with us at a later time today.

This hearing is designed to bring out the facts regarding the effect of the failure of certain trial judges to charge a defendant with a prior conviction in narcotic cases. We have learned that it has become a common practice for the trial judge to strike or dismiss a prior conviction notwithstanding a law which provides that a prior conviction involving narcotics shall be charged. We believe that this constitutes a disregard of the legislative intent to establish more severe penalties for narcotic repeaters. The testimony which we will receive today, I believe will indicate what legislative steps are necessary in order to clearly spell out for the benefit of certain trial judges what the legislative intent with regard to repeaters is. The first witness today will be Roy A. Gustafson, District Attorney of Ventura County. Will you please come forward, Mr. Gustafson?

MR. GUSTAFSON:

ROY GUSTAFSON
District Attorney
Ventura

Mr. Chairman, may the record show that I'm here at the request of the Committee?

CHAIRMAN CRAWFORD: The record will so indicate inasmuch as you are not permitted to appear or to advocate legislation on your own accord. You have appeared here at our request.

MR. GUSTAFSON: Mr. Chairman and members of the Committee. The Assembly Interim Judiciary Committee now has before it Assembly Bill #751 introduced at the last Session. This bill was drafted because of the Supreme Court's decision in the case of People v Burke.

In the case of People v Burke, the defendant was charged with a prior narcotics conviction as well as the substantive offense. He was found guilty, but the trial judge at the time of sentencing, struck the allegation of the prior conviction even though the defendant had admitted it...that he had suffered the prior conviction. The District Court of

Appeals affirmed the judgment of conviction but reversed and sent the case back to the Trial Court for the purpose of sentencing the defendant as prescribed by law. Namely, to the State Prison because he had, in fact, suffered a prior conviction and was not eligible for probation and was not eligible for a County Jail sentence, being a repeater narcotic offender.

The Supreme Court granted a hearing and affirmed the conviction of the defendant and also affirmed the action of the trial judge in striking the prior, stating that under Section 1385 of the Penal Code as it now reads, the Legislature has given that power to the trial judge. Section 1385 now reads, "The Court may either of its own motion or upon the application of the prosecuting attorney and in furtherance of justice, order an action to be dismissed."

Now, under that the Supreme Court said that the action or any part thereof may be dismissed by the trial judge of its own motion without motion of the prosecuting attorney at any time before trial, during trial, or after trial.

Now, this is a very broad interpretation. Perhaps it is a justifiable interpretation, but I doubt whether that's what the Legislature meant originally in enacting this Section. The interpretation goes so far now that there is really nothing to preclude a trial judge from dismissing the action after a man has been sentenced and is in prison. It's conceivable that a person who applies for a pardon and doesn't get one and applies for a parole and doesn't get one can go back to the Trial Court two, three, four and five years later, while he's still in prison and get the Court to dismiss the entire action. There's nothing in the Burke case which indicates that the Trial Court wouldn't have the power to do that at that time. The language of the Burke case was innocuous at the time that it was written insofar as it was confined to the striking of a prior which the defendant had admitted.

But cases subsequent to the Burke case have extended it and apparently with approval of the Supreme Court. Those were the cases of People v Harris 146 Cal. App. 2d 142 and People v Benjamin 154 Ad Cal. App. 195.

In People v Harris, the Court said this, "The record herein shows that the Trial Court having found a prior conviction of appellant to be true was greatly disturbed because he was unable to grant appellant probation. He stated that the law had made it mandatory that he sentence appellant to State Prison, that he had no alternative and that he could only recommend to the Adult Authority a minimum sentence and the earliest parole." This is a narcotics violator with a prior.

The District Court says this in addition then, to correct the trial judge, "The transcript shows that the trial judge was in error in concluding that he had no alternative except to sentence appellant to State Prison. He apparently

was not aware of the power to dismiss the prior conviction in order to avoid that sentence. Since the Supreme Court in People v Burke, Supra, has now made the law clear in this respect, the Trial Court in future cases will not fall into this error at the time of sentencing." So now we have a decision by the District Court of Appeal that says in effect that it is an error for the Trial Court not to strike the prior if the Trial Court doesn't agree with the sentence that the Legislature has prescribed.

ASSEMBLYMAN CASPAR WEINBERGER: Mr. Chairman?

CHAIRMAN CRAWFORD: Mr. Weinberger.

ASSEMBLYMAN WEINBERGER: In the Burke case, Mr. Gustafson, was the...which is apparently the foundation for all of this...was the Supreme Court speaking of a situation where the trial judge was striking a prior conviction where the sentence had been completed?

MR. GUSTAFSON: No. The Supreme Court in that case was speaking of striking a prior conviction after the defendant had been convicted by trial and after he had admitted when charged with the prior that the prior was true. So at that moment there was the conviction of the substantive offense and an admission that the defendant had suffered the prior.

ASSEMBLYMAN WEINBERGER: And had he served the sentence in effect on the prior?

MR. GUSTAFSON: Yes, his prior sentence had been served, yes.

ASSEMBLYMAN WEINBERGER: Completely finished and at that point the Court said that the ...the Supreme Court said that the Trial Court in a subsequent case could, in effect, strike it out by dismissing it?

MR. GUSTAFSON: By dismissing it...so that then he stood before the Court as though he were a first time offender and that made him eligible to a County Jail sentence or probation and I believe in the Burke case, it was a County Jail sentence. Had the prior remained in, he would have been ineligible for County Jail and ineligible for probation and would have had to be sent to State Prison.

ASSEMBLYMAN WEINBERGER: Is there anything left of the original case to be dismissed when the man had completed serving his sentence under it? Was he still under the duty of reporting for probation?

MR. GUSTAFSON: No. But it wouldn't make, in my judgment, any difference whether there was or wasn't because the Judge in that instance is not affecting the prior case, that is, he isn't dismissing the prior case. He isn't affecting the judgment of the order of probation in that case.

He is only, in the instant case, striking out of the information or the indictment or the complaint, the allegation that the man had suffered a prior.

ASSEMBLYMAN WEINBERGER: He is really permitted himself to give a lighter sentence than the Legislature has required.

MR. GUSTAFSON: That's correct. But the Supreme Court said that that is what the Legislature intended by Section 1385. That it intended to permit the Judge to do just that. And the question, of course here is....does the Legislature intend, when it enacts penalties for repeated offenses...offenders, to give a blanket power to a trial judge to strike the allegation which invoked that greater penalty.

ASSEMBLYMAN WEINBERGER: So really all the Legislature said in that Section was that the Court may, on its own motion, order an action to be dismissed.

MR. GUSTAFSON: That's correct. But the Court has said that...the Supreme Court has said that means before trial, during trial, after trial, after admission, after a plea of guilty, at any time.

ASSEMBLYMAN WEINBERGER: After sentence and after he is out of jail?

MR. GUSTAFSON: This could conceivably be so. There is no case where that has occurred yet, but I believe that eventually there will be such a case. Particularly, somebody who is in prison and wants to get out of prison and can't get a pardon and can't get a parole, if he can impose on some trial judge to strike the entire case, he will then be out.

Now, in People v Valente, the Supreme Court indicated what the effect of this Burke ruling is. This is reported in 49 AD. Cal. 201, just a few months ago. This was not a narcotics case, but a bookmaking case, and it was a case where the jury trial was proceeding and about the seventh or eighth witness, the Judge believed that the witness was introducing evidence which had been illegally obtained. So right in the middle of the prosecution's case he said, "I think the evidence has been illegally obtained, therefore, I dismiss the information. So he dismissed the case right in the middle of the prosecution's case.

The Supreme Court in the Valente case acknowledged number one, that the trial judge was absolutely wrong in believing that the evidence was illegally obtained, it had been legally obtained; and number two, that he shouldn't have taken the action to strike the case, that is to dismiss the entire case, that the proper ruling was to exclude the evidence and go on with the case. But they said that since the Legislature by Section 1385 had given the Court

that complete power to dismiss the case at any time for any reason, that ends the matter and there's no appeal by the People from that order and the defendant is free.

The Court said, "We recognize in the Burke..." speaking about the Valente case, the Court said, "Not only was the Trial Court mistaken in the stated belief that if a defendant was illegally arrested, there was no question to be presented to the jury, it was also mistaken in its suggestion that where an officer has a reasonable cause to believe the defendant has committed a felony, he cannot properly arrest the defendant at night without a warrant." But, it went on to say, "....that under the Burke case, the Court had the power to dismiss the action and that's all there is to it."

So we have all of these cases and then we have the People v Benjamin case which I mentioned and cited, and in that case, the defendant asked the trial judge to strike the prior. The trial judge did not strike the prior...The allegation of the prior offence....Then the defendant appealed and said that the Trial Court abused its discretion in not considering whether to strike the prior. The District Court of Appeal apparently agreed with the appellant's contention on that point insofar as it concerned the duty of the trial judge to decide whether he should strike the prior. But the District Court of Appeal then said that the trial judge had exercised his discretion and had decided not to strike it.

So we now, apparently, reached a stage where even though a defendant has no motion whatever available for striking a prior or for striking an action since that lies only on the Court's own motion or the motion of the prosecuting attorney, it may be error for the Court to fail on its own motion to consider whether it should or shouldn't strike the prior. Now, that's going pretty far. Now, as a remedy for this Assembly Bill 751 would provide that the Judge could not on his own motion strike a prior. As amended at the last Session, the bill reads, "The Court may upon motion of the prosecuting attorney at any time prior to conviction by plea, verdict or finding order the dismissal of a complaint, indictment or information or of any count or allegation therein as to any or all defendants. The Court may also order such dismissal on the ground of insufficiency of the evidence on motion of the defendant at the close of the prosectution's case."

This bill does several things: (1) It takes away from the Court the power to dismiss all or any part of an action on its own motion. It must be remembered that in most states in the United States and in England, that power rests solely with the prosecuting attorney. The Court not only cannot dismiss on its own motion, but it cannot force the District Attorney to dismiss, it cannot force the District Attorney not to dismiss. In California, however, we have abolished by Section 1386, the District Attorney's right to answer a nolle prosequi and has substituted in its stead the

power of the Court to dismiss on motion of the District Attorney or on its own motion.

Personally, I believe it should rest with the Court, because it is subject to abuse of agress in one party alone. But that same reason why the California rule was changed before and why I think it's a good change to vest it in the Court-should require two persons to do it....Namely, the District Attorney to make the move or the prosecuting attorney and the Judge to decide the question. By putting it in the Court alone you have exactly the same possibility of abuse as you have when it's in the prosecuting attorney alone. It should be in the Judge on motion of the prosecuting attorney. Now, the present system, of course, makes little sense logically because the Judge can dismiss the case before he even hears one word of testimony and I ask, how in the world can the Judge determine that it is in the interest of justice to dismiss a case when he hasn't heard a word of the evidence?

This involves a lot more than narcotics of course. It involves all kinds of cases but the horrible situation in some communities with respect to fixing traffic cases, for example, rests on Section 1385 as it now stands. Because the man who gets a ticket walks into the Judge in Chambers, the Judge says, "Oh, hello, old friend, I'll take care of this." He dismisses the case. He hasn't heard a word of the prosecution's evidence. He simply dismisses it under his power under Section 1385. Certainly, there should be no such dismissal unless the District Attorney or the Prosecuting Attorney, City Attorney, whoever it may be, makes the motion to dismiss, then the Judge passes on that motion. There's certainly much less liklihood of collusion and fraud and improper dealing when the law is that way than when it's the way it is today. Then, the bill as presented says that this dismissal can only occur at any time prior to conviction. That, of course, would eliminate striking the prior after the defendant has admitted that the prior is true. It also eliminates striking the prior or the entire action after the defendant has pleaded guilty or been found quilty by a Court or a jury.

There are plenty of procedures available in case a mistake has been made in finding a man guilty. For example, a motion for a new trial. But if a motion for a new trial is granted, the Prosecuting Attorney at least gets the chance to try his case again. If the case is dismissed after the defendant has been on trial and been found guilty under the Section as it now reads, prosecution is barred. So there's no reason why the order dismissing all or part of the case should not be limited to a time prior to the finding of guilty.

Then another thing provided by the bill is for the benefit of the defendant which the defendant does not now have and that is, a motion to dismiss for insufficiency of the evidence. Right now if the prosecutor presents a case and rests, even though the evidence may be legally insufficient to sustain a conviction, there is nothing the Judge can do about it. He cannot grant a defendant's motion for a judgment of not guilty because the defendant has no motion under Section 1385. It's limited to the

Court on its own motion or the Prosecuting Attorney. This last sentence in AB 751 would give the defendant a right which he does not now have and which I think he should have. Namely, if the evidence is insufficient to sustain a conviction after the prosecution has rested its case, then he ought to be entitled to what in the Civil Court is a non-suit and that has been added for the benefit of the defendant in this respect.

Mr. Chairman, I have much more material here, but I think that, perhaps, the time of the Committee might be saved if I were simply to answer or try to answer such questions as the Committee might have...so that we could get at the meat of what the Committee is interested in.

CHAIRMAN CRAWFORD: Thank you, Mr. Gustafson. Prior to the Committee asking questions, I would like to take this opportunity to introduce Assemblyman John O'Connell from San Francisco, who has just joined us. Are there questions from members of the Committee? Phil Burton?

ASSEMBLYMAN PHILIP BURTON: Yes, Mr. Gustafson, you quoted some Appellate Court case. Can you give us either a citation or the name of the case? The fact situation that you related to the Committee was that the Appellate Court hinted that the Trial Court had a duty to determine whether or not he should strike the prior.

MR. GUSTAFSON: Yes. That's People v Benjamin, 1957, 154 AD. Cal. App. 195.

ASSEMBLYMAN BURTON: You mentioned to the Committee that there was some verbage in the Court's decision that would lead you to believe that we can expect Courts in the future to say that the Judge has this duty to determine whether or not he should strike a prior? Then why, based on what you said and without reading the case, it occurred to me that this at best was just dicta in the case and apparently wasn't relevant to the decision of the Court. Now, am I incorrect in that?

MR. GUSTAFSON: No. I think it really was more than dictum insofar as the point of appellant was that the Court erred in no exercising its discretion to determine whether the prior should be stricken. The Appellate Court said, ...well, it accepted in effect this philosophy but said the Court did exercise its discretion, it did consider whether to strike the prior and decided not to do so and therefor there was no error. But inclusive in that language is that if the Trial Court hadn't considered whether or not to strike the prior, the appellant would have had a good point of appeal.

ASSEMBLYMAN BURTON: Was this Burke case...did this come out of the Ventura County courts?

MR. GUSTAFSON: No, it came out of Los Angeles, where the practice of striking priors is quite common. I might say in that respect that it seems to me that a newspaper release here of

the Los Angeles Times from the presiding Judge of the Superior Court in Los Angeles in defense of striking the priors apparently spoke to the Grand Jury about the matter and claimed that 93% of heroin sellers who had prior convictions went to prison. As I read the law, 100% of heroin sellers who have prior convictions are supposed to go to prison. He also said that 87% of marijuana sellers with prior convictions went to prison from Los Angeles County. The law seems to be that 100% should go to prison. However, there is this conflict in the law because the Health and Safety Code penalty provisions and so forth state the law what happens to a person with a prior conviction, it also states that the prior conviction shall be alleged by the District Attorney in the accusatory pleading, but we have opposite that Section 1385 which the Court interprets as a legislative grant to the Trial Courts to dismiss priors.

ASSEMBLYMAN BURTON: You think, in other words, that it's an unhealthy state of affairs that the law has this ambiguity or that it has these two apparently contradictory philosophies at work or do you think it unhealthy that the trial judges have this discretion?

MR. GUSTAFSON: I think it is an unhealthy state of affairs that this power should be left with the trial judges as it apparently now is under this statute, because I think it leads to disrespect for the law. For one thing, it is quite a fiction for anybody, it should impress anybody as being quite a fiction when the Judge says, I find that this prior isn't true. That the Judges, you must realize have three methods of doing this.

(1) They either strike a prior which has been admitted or to be found to be true; or

(2) They fail to make a finding with respect to the prior conviction; or

(3) Even though the defendant on the witness stand has admitted that he suffered a prior, they find that the prior conviction is not true.

Well, as Mr. Justice Fourt has so well said in a couple of cases, "Where does that leave the defendant to believe he was at the time he was in prison when the trial judge say, 'It isn't true, you did not suffer a prior conviction.'"

I think that this will account in part for the statistics in Los Angeles County where this practice is most prevalent with respect to the trial of cases and the results of trial of cases. For example, the statistics put out by the Bureau of Criminal Statistics of the State of California by the Department of Justice indicate that among the 20 largest counties in the State, statistics of which I have compiled for my own information, the number of pleas of not guilty is the lowest of any in the entire State. Only 57% of the people charged with felonies in the Superior Court of Los Angeles plead guilty. Los Angeles has been at the bottom of the list for four straight years as to the lowest number of persons who plead guilty. That I think

is some indication that people plead not guilty because of the lenient disposition of cases in the Superior Court in Los Angeles County. No, jury trials, I think.....

ASSEMBLYMAN BURTON: Pardon me for interrupting. How does that follow?

MR. GUSTAFSON: A person who has the hope based upon experience in the Courts that the Judge is likely, for example, to find that a prior is not true when in fact the person knows it's true, isn't going to admit it. He's going to say, not guilty or deny the prior because he's going to get a soft deal. Now that, I think, also accounts for this startling...or at least to me... startling statistic in Los Angeles County in criminal cases only 16% of the defendants asked for jury trials, 84% want to be tried by the judges. It is quite a well-known fact that in a criminal case ordinarily the defendant's chances are better with a jury than with a judge and that is borne out by the fact that throughout the other 57 counties of the State, 68% of the defendants ask for Jury trials versus 32% who ask for Court Trials. So you have over 400% ratio-wise more persons in Los Angeles County asking for Court trials than in the entire other 57 counties of California.

ASSEMBLYMAN BURTON: Just this one final question. Are we to infer that from this article in the Times that the judiciary here in Los Angeles opposes the proposal embodied in AB 751?

MR. GUSTAFSON: I'm quite sure from all I have read from the statements of Judge Sparling, presiding Judge of the Criminal Department here, that they very definitely oppose it. The statements that have been made in the press is that striking a prior ties the hands of the Adult Authority and the judges want to leave the Adult Authority free to handle these cases. I think that statement is patently wrong.

In the first place, when a prior is stricken and a defendant is given a County Jail sentence or probation instead of being sentenced to prison, the striking of the prior completely deprives the Adult Authority of any jurisdiction whatever because the man doesn't get to the Adult Authority. He's in the County Jail or under the probation officer.

In the second place, if he is sent to prison, if the allegation of the prior remains in there, it gives the Adult Authority greater jurisdiction because it allows the Adult Authority to keep that man longer if the Adult Authority sees fit. In other words, instead of 10 years as a maximum, it is increased to 20 years on a second offense of possession. If they have a man up there who at the end of 10 years they feel is not fit for release to society, if the prior were in there, they have greater authority, they can keep him as long as 20 if they wanted to. Without the prior they must release him at the end of 10 years. Now, on the minimum end all it does is this: It increases the minimum from one year to two years and this, of course, theoretically, does tie the hands of the Adult Authority. They can't release a repeated

narcotic offender at the end of one and half years if the prior is in there; whereas, they could release him at the end of one and a half years if the prior wasn't there. But as a practical matter this is meaningless because even a first offender is kept there two years anyway. Their statistics show it. The Judge of the Superior Court, Judge Sparling down here admits that the first offender is kept two years anyway. So as to the minimum sentence the only place where the hands of the Adult Authority would be tied, the allegation of the prior doesn't have any practical effect.

It has a great practical effect on the other end..... namely, the maximum. It permits the Adult Authority to keep the man for 20 years if they deem it necessary, and I do not see how any person can, at the moment, predict what the Adult Authority will feel 8, 9, 10, 12 years from now when a particular person's case is being considered. After all, the Adult Authority itself has made some comments about some prisoners whom they have had to release at the expiration of sentence who they would have liked to have kept longer, but the law didn't permit them to and I think that the killer Nash was one example of that. They had to release him. They can have that type of man in for a narcotics offense and if the prior is alleged and found to be true and a man is up there on that, they can keep him twice as long if they so choose. There's nothing to compel them to keep him, but they may keep him that long if he's that type of man.

CHAIRMAN CRAWFORD: Thank you. Mr. Allen?

ASSEMBLYMAN BRUCE ALLEN: Mr. Gustafson, suppose we have this change in the law as proposed in Assembly Bill 751, will that stop these judges who want in a particular case to give the man a County Jail sentence or a lesser penitentiary sentence or probation? Will that stop them in the final process from dismissing the allegation of prior conviction even if true?

MR. GUSTAFSON: Yes. It will stop them in that they will have no power to dismiss it. It will be a void order, absolutely void, because there will have been no authorization for the Court to do so and the District Attorney could appeal that. It's a void order and it's an order made after judgment and it's therefor appealable. But I do admit this, Mr. Allen, and that is that if the defendant has denied the prior and there is a trial on it, nobody can stop a Judge from deciding that he doesn't believe the evidence. He can say that, "I find that the prior conviction has not been proved to me." Even though there are certified copies of the judgment before him, even though the defendant on the stand has said I suffered the prior, he can still say to the public and to himself and to the Court...in Court, "I find it not to be true," and that, of course, is another device they are using today.

Another device they're using and this bill wouldn't stop that, that's just left to the honesty and integrity of the judge to make a correct factual determination. Another device that's being used today is to make no finding. He simply says, "I refuse to make a finding." Now, I think in that situation,

if the law were amended to say that he has no power to strike the prior then a mandamus action would lie to compel him to make a finding on this issue which has been joined by the pleadings. The prosecutor charging a prior offense took place, the defendant denying it.

I would like to add this one note, Mr. Allen, because I think it's extremely important to do so because you people will certainly want to consider all aspects of this, including the constitutional aspects. Mr. Justice Shauer wrote the opinion in the Burke case and the Valente case he has hinted very strongly that if the Legislature passes anything like AB 751, the Court will hold that this does not deprive the trial court from striking priors or from dismissing cases because it's an inherent power of the Court, in other words, that AB 751 might be unconstitutional. For example, in the Valente case he said, speaking of the Burke case, "We recognize that such charge can be dismissed or stricken or set aside even after trial in the exercise of the trial court's inherent power to control the proceedings before it, and in the exercise of the power under Section 1385. This is, of course, a broad hint that regardless of what you do with Section 1385, at least Mr. Justice Shauer is going to believe that that will not deprive the trial court of it's power to dismiss a prior.

I do not believe that four Justices of the Supreme Court will go along with that if the matter is squarely presented. The reason I believe that this dictum here will not be followed is that all the other states of the union and in England where the power of dismissal rests solely with the prosecutor, under the old systems, no Court has said that there's any inherent power in a trial court to dismiss a case. Now, California would be unique if it decided despite an amendment to Section 1385 that the amendment had no effect and the trial court retained that power. I just don't believe that four Justices of the Supreme Court would rule Section 1385 unconstitutional or not unconstitutional, but as not affecting the inherent power of the trial court to dismiss a case.

ASSEMBLYMAN ALLEN: This bill, as I understand it, would require a motion to be made in open court by one side or the other?

MR. GUSTAFSON: That's correct.

ASSEMBLYMAN ALLEN: You couldn't have a decision without first allowing the District Attorney to argue his case before the court?

MR. GUSTAFSON: That's right.

ASSEMBLYMAN ALLEN: And do you think that if this were passed there would be fewer cases in which this happens where the prior conviction is stricken or the judge refuses to find on it?

MR. GUSTAFSON: Yes, I think for this reason, Mr. Allen, that there are obviously many cases now where the judge just decides for himself over the objections of the Prosecuting Attorney to dismiss a prior or to dismiss the entire case. Those would not happen under the new bill.

practice of finding a prior to be untrue despite the clear evidence on it and also the present practice of refusing to make a finding. This would be quite, I think, persuasive on the judge to go ahead and follow through on it. Right now he can very easily say, "Well, I refuse to make a finding," or "I find that it is not true because if I found it was true, I could dismiss it anyway. So what I can do indirectly, I can do directly. There's no need of my finding that the prior is true and then striking it, I just won't find it's true or I won't make any finding at all." This practice now has some logical justification because if that's the end result that the judge wants he can reach it ultimately anyway.

Whereas if the law were changed so that he couldn't strike it, then he couldn't justify this other type of action on the ground that he's only reaching a result that he could have reached anyway.

ASSEMBLYMAN ALLEN: Suppose under the crime that is alleged, the code section it comes under and the minimum sentence is, say, two years in the State penitentiary and the judge just sentences the man to the County Jail? What's the effect of that?

MR. GUSTAFSON: Of course, it's just a void order and it's certainly reachable either on appeal or by mandamus. I recognize this though, Mr. Allen, there are many District Attorneys who do not bother to enforce the law in that respect...that is to say to the judge...it's kind of a ticklish thing to bring a proceeding against him, to compel him to obey the law with respect to sentencing. But there are occasions when it has been done and I have done so myself on occasion. Even with respect, for example, the probation. If the judge doesn't follow the rules set down by the Legislature on how probation shall be granted and the formalities to be followed, he can be sued and I sued one of my judges on that basis in the District Court of Appeals to mandamus him to follow the law. I think that that is the only remedy open if the judge does something...but I recognize that today there are cases which call for a penitentiary offense where a judge will impose a County Jail sentence and nothing will be done about it. It just isn't appealed by the prosecutor.

ASSEMBLYMAN ALLEN: Isn't this problem we're talking about today ... this practice of some of these judges, simply a basic policy disagreement that these particular judges have with statutes such as Section 11715.6 of the Health and Safety Code that prohibits probation?

MR. GUSTAFSON: There is no question about it but that it's a basic policy disagreement. A particular judge will think that he knows better how to dispose of a case than the Legislature does and he, therefore, will decide that he will do it his way and that the law is unwise.

It's my own feeling that the law represents the wisdom of all the people of the State, put on the books through the elected representatives and that if that differs from an individual's view of what would be appropriate in the case, the

individual's view should not prevail, it's the legislative view that should prevail. Obviously, there's quite a great deal of difference in that philosophy that many judges believe that they have more wisdom with respect as to how to dispose of a case than the legislature. Certainly, that's the basic conflict here...the disagreement by judges with what the Legislature has said.

ASSEMBLYMAN ALLEN: And then doesn't it follow that if we lack the policy established by this code section that in second offenders in narcotics cases there shall be no probation and every case shall serve time according to the statutory penalties and then we have a loophole here, we have to close.

MR. GUSTAFSON: That's right. This has been interpreted as being directly contrary to what you said in these other things and of course, it is up to you to decide whether you want to leave that loophole. Right now, of course, it is argued and I've seen statements in the public press to this effect, that the Legislature intends that the judges should strike the priors because of its enactment of Section 1385 and its failure to amend it to close that loophole. And there's valid argument there that that is what you people intend, because that's the way the Court construes this section.

ASSEMBLYMAN ALLEN: Let's get back to another question then. Do you think this policy we have established, that there shall be no probation granted to second offenders in narcotics cases is a good policy?

MR. GUSTAFSON: In general yes. Yes, I do. I think that it's a good policy to prohibit probation and to prohibit a County Jail sentence on a second narcotics offense.

ASSEMBLYMAN ALLEN: Why?

MR. GUSTAFSON: Because I think that when a person has once been convicted and once had the benefit of either probation or a County Jail sentence which would ordinarily be a disposition in a first offense case and this has failed to do him any good, both personally and in his attitude and he has gone out and violated the narcotics laws again then I think he should be placed in the control of the Adult Authority where, I think, the facilities are better for attempting to rehabilitate him. That's the number one reason why I think that this policy of the Legislature is wise.

The number two reason and to me the most important one is this. That is, you can talk all you want about the purpose of punishment whether it's to deter the particular offender or whether it's to deter others or whether it's retribution imposed by society or what it is, but the one thing that stands out in any penitentiary incarceration is this: The protection of society. I think that's the principle purpose of punishment. A man can't be out on the streets selling narcotics to innocent persons and inducing some people to take narcotics if, in fact, he's locked in jail and he can't be taking them himself. The reason I say penitentiary then, Adult Authority rather than County Jail, is

because it is a longer period of incarceration and it is just that much longer that he is not offending against the laws of society. Society has some rights and I think that recently we have had a philosophy from trial judges on up to the Supreme Court wherein the rights of society have been forgotten.

If I may, Mr. Allen and Mr. Chairman, I would like to quote just briefly from Professor Rex Collings treatment of Criminal Law and Administration which appears in the annual survey of American Law published by the New York University Law School annually.....wherein Mr. Collings points out that reviewing the decisions of last year, that this was a black year in law enforcement. He said we are losing the war against crime despite unparelleled police forces and investigation techniques such as the FBI and highly developed investigative techniques.

There was more crime last year than in any preceding year and it continues to increase four times more rapidly than population. Why are we losing the battle? Perhaps it is because criminal justice has become badly unbalanced. Too often it is justice for defendants without regard for the needs and problems for law enforcement and the public. And he points out that legislation in this area, this is pertinent to this inquiry, legislation in this area is difficult to adopt and should be unnecessary. The main need is for judicial restraint. More emphasis by the Supreme Court on the last half of its title and less on the first. It might also give occasional recognition to such dormant parts of the Constitution as the Tenth Amendment and the Doctrine of Separation of Powers. As Chief Justice Stone once said, while unconstitutional exercise of the power by the executive and legislative branches is subject to judicial restraint, the only check upon the courts exercise of power is its own sense of self-restraint. I mention that because if you do amend Section 1385, there is already the implied threat by Justice Shauer that it will not be effective.

ASSEMBLYMAN ALLEN: Now, one other question, Mr. Chairman, somewhat apart from this previous discussion and that is under Section 11713 on the selling on the first offense, the statutory punishment is imprisonment in the County Jail for up to a year or in the State Prison from 5 years to life.

MR. GUSTAFSON: Yes.

ASSEMBLYMAN ALLEN: For some peculiar reason a man can get a county jail sentence of a year or less but not state prison for, say, two years, or three years. Has that given rise to any difficulty?

MR. GUSTAFSON: No, and I don't say that I don't understand your question...you mean and not get a state prison sentence for two or three years. He may get a State prison sentence.

ASSEMBLYMAN ALLEN: In all these other Code Sections you will find that the minimum state prison sentence starts where a county jail sentence leaves off. In other words, if a man can

be sentenced for a particular offense to the county jail for a year then the minimum state prison sentence would be a year and on up.

MR. GUSTAFSON: Yes.

ASSEMBLYMAN ALLEN: But in this particular Code Section...

MR. GUSTAFSON: There's no minimum.

ASSEMBLYMAN ALLEN: ...selling, there's a minimum of five years on the first offense, but not on the county jail sentence.

MR. GUSTAFSON: No, that hasn't given rise to any particular problems. It must be remembered that if a man is even sent to prison for a minimum of five years on a first offense such as that...his sentence can be cut down by the Adult Authority, and moreover, within the time within which the sentence is cut down and he is discharged, he can be paroled much earlier than that so that really he isn't going to serve probably on something like that more than two years anyway.

CHAIRMAN CRAWFORD: Mr. Weinberger.

ASSEMBLYMAN WEINBERGER: Mr. Gustafson, we've been talking quite a lot about the legal rights of the Courts under these Sections and some rather, as I can see them, narrow amendments that might change a few of these things, I'm interested in one broader question. I'd like to know if any of these courts in any of these cases have indicated any reason why a person with two prior narcotics convictions should have the benefit of all of this backing and filling and all of this hunting around for legal means to avoid giving him the sentence that was stated in the legislative action creating the sentence.

MR. GUSTAFSON: I have never seen any attempted explanation of why.

ASSEMBLYMAN WEINBERGER: I mean, if a man has been sentenced once and he's been sentenced twice and then we have to hunt around and find various alleys and various, as I can see, rather devious methods of finding prior convictions that are admitted to be untrue or to make no finding at all, there must be some basic reason as to why this hunt has to go on. Has any Judge ever put in any of his oral statements from the bench or any of his memorandum, opinion...any of the trial judges, any of the reasons why this hunt should be...

MR. GUSTAFSON: I have never seen in the published reports or in any Trial Court's memoranda decisions or in any Appellate Court reports...any justification for this. Apparently, there are some in the report in the Los Angeles Times quoting Judge Sparling....his saying that among the exceptions in his not sentencing a person with a prior to the State Penitentiary he is quoted as saying this, "Among exceptions,..." and Judge Sparling said that

he was proud he didn't impose prison sentence in these cases where a teenage, moron, pregnant girl whose husband induced her to sell narcotics and a 14-year old boy whom a narcotics officer entrapped into buying him two marijuana cigarettes. Those are two illustrations where he has publicly stated that he is proud that he didn't impose the prison sentence.

In the first place, with respect to the 14-year old boy, he would not have to be subject at all to the criminal laws. He would be treated as a juvenile and furthermore, if he was entrapped into buying two marijuana cigarettes, he wasn't guilty at all and anybody that would find a person guilty or impose a sentence on somebody who has been entrapped, ought to be censured for that. With respect to the teenage, moron, pregnant girl, who apparently for the second time was selling narcotics, there are again other dispositions that can be made with a case like that, if this is her second offense of selling narcotics. Again, the Youth Authority is available to her rather than prison. This is the only justification, Mr. Weinberger, that I've ever seen anybody give of disregarding the law. These are two illustrations.

ASSEMBLYMAN WEINBERGER: Nothing in there about protecting the public, then?

MR. GUSTAFSON: No.

ASSEMBLYMAN WEINBERGER: I have one other question and I've been concerned about it since the questions that Mr. Allen has put and your answers to them. Assembly Bill 751 seems to be designed to reach a special narrow and rather limited situation. It does not seem to have any provisions in it that would take advantage of the implied warning that you spoke to us about and the Supreme Court's decisions to the effect that no matter what we might do with AB 751, judges would still be quite free to disregard the findings of fact or to make no findings of fact and disregard the actual fact as to prior convictions.

In view of all this, my worry, my fear would be that Assembly Bill 751 didn't go far enough to reach more than the narrow situation for which it was designed and that if we're going into this field, as I think we should, we would need a considerably broader bill than AB 751 and possibly in view of what's been said about the warnings contained in the Justice Shauer opinion, possibly we might need a constitutional amendment to emphasis that what the Legislature says as far as prior convictions are concerned, it means.

MR. GUSTAFSON: I agree that perhaps the bill should be more detailed and spelled out clearer, although I cannot conceive of any language that would compel a judge to make a particular finding, in other words, to say, "Well, now Judge, when you've got the certified copies of the judgments before you, you can't find it not to be true."

ASSEMBLYMAN WEINBERGER: No, but you could have a provision that when a certified copy of a finding of conviction was introduced and unchallenged that then automatically there would be a sentence with a minimum of such and such number of years.

MR. GUSTAFSON: Yes, you could do that. But as far as the constitutional amendment is concerned, Mr. Weinberger, I personally don't believe it's necessary because this was just dictum in each of these two cases and I think when the point comes up, as I say, I don't think four justices will hold that there's any inherent power of the Trial Court to dismiss the prosecutor's case.

CHAIRMAN CRAWFORD: Thank you. Mr. O'Connell?

ASSEMBLYMAN JOHN A. O'CONNELL: Mr. Gustafson, first I thought your explanation of these two examples that Judge Sparling pointed out rather airily disposed of the situation. Suppose this teenage, moron, pregnant girl had been an adult, what other remedy would be available so that this woman would not have to be sent to prison?

MR. GUSTAFSON: There is none. I mean, there would be none if Section 1385 were amended to prevent the judge from striking the prior. She'd have to be sent to prison. Now, there would be one other thing...

ASSEMBLYMAN O'CONNELL: The point is, Mr. Gustafson, that I think Judge Sparling probably used these examples to show that there are some hardship cases that come before any judge and that if the hardship cases are to be taken into account that the judge must have some discretion.

MR. GUSTAFSON: My own philosophy on that is this: I have enough confidence in somebody in Los Angeles, such as Bill McKesson, the District Attorney here, who formerly was a Superior Court judge and the members of his staff, that if he is impressed that this is a case which should not be treated in the regular course of criminal activity and if, for example, the prior conviction should be stricken, he'll make the motion to strike it and the judge can grant it. And, as a matter of fact, there's nothing to prevent the judge, if the bill were passed, from suggesting to the District Attorney in this instance, "Mr. District Attorney, I'm quite concerned about this aspect of it," and so forth....and say, "Will you move to dismiss the prior, because if you make such a motion, I'll grant it." It seems to me that if there's a real hardship case, Mr. O'Connell, somebody like District Attorney McKesson is going to see the hardship just equally with the judge and he's then going to make the motion. If, however, he differs and says, "I don't believe this story, I don't think there's any hardship here...." and refuses to move to strike the prior, then I don't think the law should leave it to the judge nevertheless to arbitrarily and on his own motion strike it. I have enough confidence in joint action by the judge and the District Attorney to believe that's the way it should normally be handled...always be handled.

ASSEMBLYMAN O'CONNELL: Every District Attorney presently has the right now not to plead the prior, isn't that correct?

MR. GUSTAFSON: No. According to the legislative

mandate, we must plead the priors with respect to narcotics. The prior conviction shall be charged. All the narcotic sections say that. As to the main section of prior convictions of felonies, Section 969 of the Penal Code, says that we shall charge the priors. The Legislature made an amendment last year..in fact I think it was your bill, Mr. O'Connell, maybe I'm mistaken on that, but I think so...which amended Section 969 (c) of the Penal Code to say that where we....I think Section 969 (a) and 969(c) if I may see that, at any rate, two situations: (1) We may, rather than shall, allege that the defendant was armed with a deadly weapon. In other words, that part of an allegation is now discretionary rather than mandatory, and secondly, if we discover that an indictment or an information which is then pending in Court does not have an allegation that the defendant suffered prior conviction, that he did in fact suffer prior convictions, then we may, but need not, amend the indictment to charge those. But your bill or whosoever bill it was, did not cover the basic thing that we shall allege the priors in the first instance as provided in Section 969. So except with respect to that very narrow thing, it's mandatory on us to make these allegations.

ASSEMBLYMAN O'CONNELL: Now, how is that enforceable?

MR. GUSTAFSON: It isn't. That's why, of course.....

ASSEMBLYMAN O'CONNELL: Well, as a practical matter the District Attorney can plead the prior or he may ask for the prior.

MR. GUSTAFSON: And apparently, as a practical matter, a great many of them do just plead it if they want to or not. Of course, since there has been no doubt whatever about the District Attorney's right to move to dismiss a prior or the judge's power to grant such a motion, the practical method of handling it under legislative mandate would be to make the charge in each case and then if we had an amendment to Section 1385 so as to take the power away from the judge and even today, to make the allegations and then go into Court and say, "I move to strike this prior for these reasons," and laying it out on the record as to why the prior is being stricken and putting it up to the judge as to whether to grant the motion or not. And there's no skullduggery about it. Everybody who has a prior is charged with a prior, and if it's to be dismissed, it's done in open Court on motion by the District Attorney and considered publicly by the judge.

ASSEMBLYMAN O'CONNELL: The net effect of the proposed AB 751 then would be to take the sole power to dismiss away from the judge and repose that power jointly in the prosecutor and in the Court.

MR. GUSTAFSON: No. The sole power to dismiss lies in the judge, now and under the amendment. But he could not exercise that power under the amendment except upon motion by the District Attorney or the defense attorney on the conclusion of the prosecution's case. He can't arbitrarily and for his own whims dismiss it with no reason. But the power and it is essential to

emphasis is in the judge alone, the prosecutor cannot and I don't think the prosecutor should be able to arbitrarily dismiss it on his own. He should submit that to the judge for decision.

CHAIRMAN CRAWFORD: Thank you, Mr. Gustafson. Another question, Mr. Allen?

ASSEMBLYMAN ALLEN: One more. Mr. Gustafson, you read us some statistics about the fact that there are more criminal cases tried before the Courts without a jury in Los Angeles County, considerably more than in other counties and also that this dismissal of the charge of a prior conviction is a practice that occurs primarily here in Los Angeles County. Is there some reason for that?

MR. GUSTAFSON: Well, no, just a guess on my part is just a general attitude of the judges who happen to be trying cases in the Superior Court of Los Angeles County. I think that attitude reflects itself in the other figures here. For example, Los Angeles judges acquit 29% of the defendants tried by them as opposed to jury trials, whereas in the other 57 counties only 16% are acquitted. Quite a variation. In Los Angeles County 20% of those convicted are convicted of lesser offenses, whereas in the other counties only 10% are so convicted, twice as great a figure in L. A. Only 24% of the convicted felons in Los Angeles went to prison, whereas in the other 57 counties 36% did, again a startling difference. Los Angeles County granted probation to 49% of their felons, whereas in other counties only 38% are granted probation. Now, I think if those statistics indicate generally all through the criminal picture a more lenient, for the defendant, treatment by L.A. County judges, then it perhaps accounts for the fact that Los Angeles County has the greatest crime rate in California of any metropolitan area. (Exhibit 5)

CHAIRMAN CRAWFORD: Thank you, Mr. Gustafson. Our next witness will be Howard Chappell, Narcotic Agent in Charge, Treasury Department, Bureau of Narcotics, Los Angeles. Will you identify yourself for the record, please?

MR. CHAPPELL:

HOWARD CHAPPELL
Agent-in-Charge
Federal Bureau of Narcotics
Los Angeles, California

CHAIRMAN CRAWFORD: Do you have a prepared statement?

MR. CHAPPELL: No, sir, I haven't.

CHAIRMAN CRAWFORD: Mr. Chappell, can you give any indication of the number of men or manhours that are devoted to Los Angeles County in fighting the narcotics traffic from the federal viewpoint?

MR. CHAPPELL: The greatest majority of our efforts and manpower is spent right here in Greater Los Angeles. We find

a greater need within the City area than we do in the County. We have occasional work that takes us to the border and on occasions into Mexico, Arizona; for example, one of our men was sent to Italy about two years ago and he is still there. An agent of our office recently completed a big smuggling case in Seattle and Portland, so that we do do a great deal of traveling. At the present time, I have men working in New York City. I have, in fact, just returned from there on a two-week trip myself...all on narcotics business.

CHAIRMAN CRAWFORD: But the largest percentage of the manhours are spent in the metropolitan L. A. area.

MR. CHAPPELL: Yes, sir.

CHAIRMAN CRAWFORD: You are familiar with the practice of striking the priors in the Superior Courts of Los Angeles County?

MR. CHAPPELL: Yes, Mr. Crawford, I am. I might explain that my first experience on this came about about two years ago when I first took over the Los Angeles office. At that time there were some cases, federal cases in which we at least had an interest, being tried in the State Courts. Now, the government maintains a very complete record of our cases from their inception to their final disposition and the agents handling these cases would return to the office, submit a report indicating that the sentence imposed in the Superior Courts of Los Angeles were not in conformity with the state law or as I at that time understood them. I, thereafter made an investigation and I did determine that by this Burke ruling, that they were not improper...well, I take back improper, and say, that they were not illegal. Over a period of about two years, we've had some 15 or such cases. I was asked to appear before the Los Angeles County Grand Jury a while back and at that time I offered to make the Federal files available to the Los Angeles County Grand Jury. Mr. Roelle and other members of the jury came over and they examined our files. We gave them whatever they wanted. There was no picked material handed to them, we gave them whatever they wanted to pull out at random. I have not made the check myself but I was advised by Mr. Roelle after he made it that 13 out of the 15 cases that we had had prior convictions either stricken or ignored and that jail sentences in the county jail were then imposed. We, of course, in every instance notify Washington of these matters. It's a permanent record with us and it's so contrary to what the government is doing here in Los Angeles...it is so contrary to what the investigating committees of the United States Congress at great expense to the United States Treasury Department, or not...Treasury itself..and to the people...have found it to be necessary to control the narcotic traffic... I might point out this that at one period last summer, we had a Federal Judge on the bench giving sentences of 50 years and 60 years....that judge was on the bench approximately one month and the last two months he was on the bench we failed to make a narcotic case. We had big-time dope peddlers out on the street, we'd tell informers, or we'd tell their best friend, "I wouldn't touch an ounce of heroin for anything. Now, I check in with...."

CHAIRMAN CRAWFORD: Just a moment.....In order to..... clarify your terminology,.....you say you failed to make a single narcotics case.....that means that there was no narcotics activity

after this one Federal Judge was adding to these sentences.

MR. CHAPPELL: That is correct. That after a three or four-week period on the bench by this particular Judge, the wholesale peddlers in Los Angeles just went out of business. They turned their interests to gambling, numbers, and etc., but they would not handle narcotics. This Judge went off of the bench and we had a judge come in from out of town and he imposed two 8-year sentences in a narcotic case and within the next 48 hours, we started making narcotic cases again.

That brings up the question nationally, that is, throughout the country. Our experiences have been, for example, in Baltimore. I've been there recently, I've talked to the District Supervisor. The Federal agents in Baltimore are doing well if they can make three or four heroin cases a month. They've done very well in a city the size of Baltimore of almost a million people and quite a cosmopolitan area. In Boston, the same situation exists. Philadelphia, the same situation exists. In Cleveland, Ohio, and in fact, throughout Ohio, the narcotic traffic is at almost a standstill.

In January, I had an opportunity to be in Cleveland, I talked to the Federal agents there, I talked to the police officers and the officers that night were going out to make a paragoric case. Now, paragoric is an exempt preparation under the Federal statutes, it contains one grain of opium per fluid ounce, and it can be purchased one ounce at a time in a drug store in Ohio. The dope addicts were drinking paragoric. They'd go out and they'd buy one ounce a day to keep their habit up. I asked the officers what has happened to your dope addicts. I said, "Have they all gone somewhere else to pester someone else?" And they said, "It's an amazing thing, but a great many of them are still in town, but they are driving trucks or pushing handcarts down on the market and they seem to be making a half-way decent living, an honest living."

CHAIRMAN CRAWFORD: Now, to what do you attribute the fact of the narcotics traffic drying up in these areas of which you have spoken?

MR. CHAPPELL: I have a chart here (EXHIBIT 6), the only printed material I brought which will show the comparison with California and Ohio from the years 1953 to 1957. In 1953, I believe there were 388 arrests or convictions in California, 362 in Ohio. In 1954, there were 893 in California and 308 in Ohio. Then in 1955, Ohio State passed a mandatory law on narcotics which called for 20-year sentences.... The chart shows the decline in the traffic in 1955 and 1956. There was a drop from 328 in 1955 to 92 in 1956. I'm sorry I don't have the list of sentences that were imposed in Ohio that caused this decline. I know them. I can give them to you pretty much verbatim. In Cincinatti, Columbus, Cleveland...the judges imposed sentences of 80 years, 120 years, 40 years and while I have to agree with some of the do-gooders that this making of an example of some 40 or 50 people is very hard on those 40 or 50 people, I must insist that the hundreds and hundreds of young children who will not be subjected to narcotics in Ohio, the older persons who will not have their homes ruined by having a son or daughter

so if he can expect leniency or that he is not going to be in jail long.

Along that same line, I'd like to mention this. That, first there is some misconception that dope addicts are poor, unfortunate, sick people who need psychiatric care. My records, I think, will prove without any question of a doubt, maintained over many years here in Los Angeles, that the biggest percentage of our dope addicts and our dope peddlers were criminals of a different nature before they became involved with narcotics. So we have a man who is a rapist, a burglar, an armed robber, a mugger, a pimp, and he's a hoodlum, he's a criminal and society looks down upon him. He can immediately elevate his social standing to that of a poor, sick, unfortunate person by going out and acquiring a dope habit. He then earns society's compassion and so forth.

In some of our big cases we notice, for example, the Lavus case where we had some 30 big time hoodlums in Los Angeles Their history goes back to the war during the days of the Pachucos when they were swinging their chains and the girls in the Federal Building were escorted home by men so that the Pachucos wouldn't turn their cars over and bother them and so forth. This group was headed by the Lavus brothers. As we developed that case into a conspiracy here about a year and a half ago, in going over those criminal records, as I said, first we find the biggest majority of these hoodlums had records of other kinds before they got involved in narcotics or became dope addicts and secondly, they had numerous arrests for narcotics and they had three months in the county jail; they had six months in the county jail; then they were released; then they got a year in the county jail; and then they were released and they got six months in the county jail. What the Courts did for these two-bit bums was to educate them.

You take a man who is...or a boy who is 18 or 19 or 20 years old, 21 years old, and he is a dope peddler and he gets caught, he gets thrown into the County Jail for six months. While he's there, he sits down and he figures out what he did wrong. How he got caught, then gets the benefit of the wisdom of the older people in the jail. He gets back out in six months and now he knows what he did wrong the last time. His mind doesn't work to the fact that"I've done wrong, the Judge gave me a break, I'm going to straighten up now." It works the other way, he says, "Now, I know what I did wrong, I won't do it again. I won't get caught." So he goes out and he gets caught again. But after he has been caught and incarcerated two or three times in the county jail, he's learned a good many of the mistakes that he has made and he elevates himself into a higher position where he doesn't have to be out on the street handing the heroin over himself and taking the money. He is now educated to the point where he gets a runner to do that for him and he becomes harder to catch; and then he builds up a business and after a year or so he is a big-time wholesaler and we then have a hard time catching him. The local authorities have a very difficult time

catching him because they don't have the benefit of the conspiracy laws that we have nor do they always have the money available to them.

CHAIRMAN CRAWFORD: Where you make a case in this area and you have a choice between prosecuting it in federal court and the state court, which court do you prosecute the case?

MR. CHAPPELL: Almost without fail in the federal court. There are occasions, for example, if I had a new agent, I wanted to give him some experience, I might send him downtown where it is easier for him to make buys...I let him make some 30 or 40 dollar buys or $50 buys...make a couple of those then we might prosecute that in the state court.

ASSEMBLYMAN ALLEN: Is it easy to make buys?

MR. CHAPPELL: Yes, sir.

ASSEMBLYMAN ALLEN: Where?

MR. CHAPPELL: In the downtown area of Los Angeles, the city. Within the last four to five months, I have had two new officers down there just walking down the street minding their business and they were approached and they bought some marijuana from a fellow that approached them on the street. They followed him and saw who he got it from and when he came back and delivered to them, they went in and hit on the fellow that he got it from and made another buy and then they knocked them both off.

ASSEMBLYMAN WEINBERGER: What sentence did they get?

MR. CHAPPELL: I don't know if those cases have been concluded yet. They are not too old.

ASSEMBLYMAN ALLEN: Is it easier to get heroin?

MR. CHAPPELL: By and large and all in this particular instance, I reprimanded these officers for making these buys because it tied their time up when they should have been spending it on larger-sized peddlers. But in a case like that, they did make them, they did gain some experience from it and we did send it over to the state court.

CHAIRMAN CRAWFORD: Are there questions by other members of the Committee?

ASSEMBLYMAN WEINBERGER: Mr. Chairman.

CHAIRMAN CRAWFORD: Mr. Weinberger.

ASSEMBLYMAN WEINBERGER: I suppose you have already answered it, Mr. Chappell, but has this practice of the judges that we have been hearing about this morning of hunting for

these methods of striking out prior convictions so that lighter sentences can be given, has that, in your opinion, increased the problems of law enforcement, both state and federal, in the Los Angeles area?

MR. CHAPPELL: Yes. It has considerably for us. In the first place, the Bureau of Narcotics does not propose to control all narcotic traffic in the country. We propose to pick up where the local authorities leave off and to work with them. Now, as long as an officer, regardless of how good a job the Los Angeles Police Department and the Sheriff's Department, the State Bureau of Narcotics, regardless of how good a job they do, if they catch a man today and they put him in jail and six months later they've got to work on him again, they are continually working on recidivists.

We went through that when the Boggs Law was passed back in 1951. It used to be a game. We would send 50 people to jail and then we would sit in the office and say, "Well, Tony's coming out, Joe's coming out, ...so forth is coming out,..." and we'll be back on them. We'll have them in again six months after they are out. When the Boggs Law went into effect and they started getting more time, we got to the point where we were cleaning up the big people. For example, I would say in Los Angeles now in the last two years, we have knocked off a great many of the big-known wholesalers. We have knocked off two men just recently. Tie-ins...who are tied in with the syndicate, but unless these smaller men and the smaller dope peddlers are controlled by the local authorities....the smaller people become big and they take the place of the big people who leave.

ASSEMBLYMAN WEINBERGER: Have you had this problem with the federal courts? Have they hunted around for methods? Have they made no findings when prior convictions are pleaded and have they found as untrue admissions that prior convictions had been had?

MR. CHAPPELL: No, sir. Along that same line, I would like to take one exception to something that Mr. Gustafson said when he suggested the striking of priors where there is an agreement between the DA and the judge. The federal law differs in some respects from the state's so that I couldn't suggest that you use an absolutely comparable law. However, I can show you how it was handled federally.

When the Boggs Law was passed, there were some judges who arbitrarily refused to impose the sentences provided by law. The District Attorney, or the United States Attorney, would then go back to that judge in open court and advise him that he had handed out an illegal sentence. The judge would again refuse to correct that particular sentence. The sentence was then sent to the Attorney General in Washington, D. C. The Attorney General in Washington and also my Bureau in Washington would write back to me and say, "Well, this is an illegal sentence and call it to the Court's attention or the U. S. Attorney's attention." Then, the Attorney General having

written the same type of letter to the United States Attorney, they would go back to the judge again and they would call that case to his attention. Then they would write the judges remarks up andgo back to Washington and then the Attorney General might write back again and say, "Well, that's still not an adequate answer, the sentence is still illegal. Take it back again." I think it took us three or four months throughout the country to clear up all of the judges who felt that their prerogatives were being taken away from them, who took exception to the mandatory sentences. I haven't heard of a case in years where there has been a refusal to do it.

Along this line, the Federal law has left one loophole intentionally. For example, the possession of heroin calls for a minimum five-year sentence for the first offender without parole. The sale of heroin is the same. For these unfortunate cases that will occasionally come about, the Federal law has left one section which calls for possession of a narcotic drug and does not specifically name heroin and they have a separate statute which calls for a two to five year sentence for the possession of a narcotic drug with the possibility of a suspended sentence or probation. The way that's handled is this, that if we have a case where my men feel, or I feel, that there are extenuating circumstances and the person should not be subjected to the five years, we then go to the U. S. Attorney and we call that to their attention. The U. S. Attorney will then indict under the other statute. If I have a case where I feel that a man should get five years and the U. S. Attorney feels that he should not get the five years, he can still indict as he sees fit so that he is not bound by over-zealous officers or agents. He is free to do his duty as he sees fit. He, then, indicts under this statute which calls for a minimum of two, a maximum of five and the possibility of a suspended sentence.

In that category we would put somebody like a poor moron girl over 21 years of age and if for some reason she can't be put in a mental institution instead and she has to get sentenced, then the judge would have the right to suspend her sentence and order her into a mental institution. So that corrects these inequities and there is no need to have....

ASSEMBLYMAN WEINBERGER: One question, if I might, Mr. Chairman. It is true, isn't it, Mr. Chappell, that your chief, the Federal Commissioner of Narcotics has decribed California as the third worst state in the country in this field?

MR. CHAPPELL: Actually, Mr. Weinberger, a lot of hysteria to the contrary, the Federal laws and the local laws in other states have pretty well dried up the narcotic traffic with the exception of New York, Chicago, and Los Angeles. Those are our three bad spots at this time. Many of our offices we have closed out. We have entire states now where we have no agents.

ASSEMBLYMAN WEINBERGER: But in California and in Illinois and in New York you still have a major problem?

MR. CHAPPELL: We have a very major problem, yes, sir.

ASSEMBLYMAN WEINBERGER: Thank you.

CHAIRMAN CRAWFORD: Mr. Burton.

ASSEMBLYMAN BURTON: Am I correct in assuming that the fact that New York and California being waterfront areas tend to contribute to this?

MR. CHAPPELL: Yes, a great deal of this is due, however, perhaps to the temperament of some of the people. In New York they have at the present time a very bad situation involving the Puerto Ricans. This came about by reason of Mark Antonio. They bring in...I think there's almost a million there now and they came from very poor homes, they live in slum areas, their narcotic problem is quite severe just with the Puerto Ricans alone.

ASSEMBLYMAN BURTON: Would you say that slum areas themselves are in some measure a causal factor in...

MR. CHAPPELL: I would say so, yes, to some degree.

ASSEMBLYMAN BURTON: What percentage of the people that you or your office have arrested and have been convicted and then are released, what percentage of these people become repeaters in terms of sellers rather than people who were caught and just charged with possession.

MR. CHAPPELL: Generally, Mr. Burton, those who we arrest and we prosecute in the Federal Court get sufficient period of time that they don't come back to our attention. So we have no way of knowing what percentage of them may be...I would say at the present time 10% of our violators that we arrest are second offenders.

ASSEMBLYMAN BURTON: These street peddlers, addressing your attention to those types for a moment, is the gravity of the sentence... the severity of the sentence...the factor in whether or not they'll participate in peddling, or is the need for them to supply their own habits so great that they are not in a position to decide whether or not it's one year, ten, or twenty years, or ten weeks? What has been your experience in that regard? I am not talking about the suppliers now, I'm talking about the....

MR. CHAPPELL: I know, you're talking about the addicts. I would fall back again on what has happened in other areas. I mentioned Baltimore before...Ohio...New Orleans...or Louisiana...where the penalties were made stringent against the addicts themselves. The addicts were reduced by it greatly. It's true that some of them may leave a state and go to another state so it does make it difficult to say just what percentage of your addicts will, to use their own expression, "clean up," and what percentage will leave town, I think from

what I've learned in Ohio, a great many of them just cleaned up. They quit using narcotics and they still, as they say, chippy around with paregoric or perhaps if somebody went to Chicago for a weekend and he picked up a quarter of an ounce of heroin, he might bring it back into Cleveland and he would invite all of his friends in and they would all take a shot of heroin, but they wouldn't be addicted because they haven't been using it regularly.

ASSEMBLYMAN BURTON: Let me ask you this, do you have available, or can you make available to the Committee the states in which...this isn't necessarily for our printed record, but it's for our information...the states in which the narcotics problem has been eliminated to the extent that the federal government doesn't see fit to have agents in the field in these states? The reason I asked that question is that if might be helpful to us if we can find about what period of time the federal government decided the narcotics problem was licked and see what, if any relationship there is to state statutes either enacted or having been on the books in these states. Some of us are just not convinced that severity of the sentence is a factor among the street sellers, and it's a great source of concern to me for one.

MR. CHAPPELL: One thing that I think perhaps you may have overlooked in that respect is that every addict is either a salesman or a potential salesman. I mean the question of a man being a dope addict today. Today a person is free of the narcotic habit, tomorrow he strikes up an acquaintance with someone who is a dope addict and becomes a user just chippying, as they say. A month from now he is addicted and from there on he is, if not a dope peddler, he's a potential dope peddler. Within the next six months he's going to be a dope peddler. He is going to find the opportunity to get hold of $50 somewhere, or if he makes a good score, if he taps somebody on the head and he gets a hundred dollar bill, he will go buy a hundred dollars' worth of heroin...then he immediately becomes a peddler.

ASSEMBLYMAN BURTON: Now, there's just one last question. I wish for the benefit of the Committee you could define subsequent to the hearing today the meaning of this chart. I'm not sure if this...it doesn't say whether it applies to arrests or convictions. The chart does not say whether it's heroin or any kind of narcotics, possession or sales, or just what the chart means. The figures appear meaningful, but we really don't know what to address ourselves to, and it would help us if we had that information.

MR. CHAPPELL: This is part of a booklet which the Bureau put out this year and I turned it over to Mr. Roger Roelle who I think will be before you shortly.

ASSEMBLYMAN BURTON: Is that booklet available for general distribution.

MR. CHAPPELL: Yes, I can send to Washington for more of them.

ASSEMBLYMAN BURTON: I would like to have a copy of that, and perhaps some of the other members of the Committee would too.

CHAIRMAN CRAWFORD: The secretary will take note of that. Mr. O'Connell?

ASSEMBLYMAN O'CONNELL: Do you know, sir, if it's common for the United States Attorney to charge these statutes, making one part of them mandatory for 5 years...about probation and the two to five...with possibility of suspension and so on?

MR. CHAPPELL: The way we do that is this: For example, I'll give you an example of an.... actual..... We had a man by the name of Armando Mendoza in Los Angeles. Armando was a second offender. We caught him in possession of approximately five ounces of heroin - pure heroin - which he had just brought up from Mexico. Under the statutes at that time, he was subject to a maximum of 20 years. We didn't want to bind the judge's hands by limiting him to 20 years, so we charged both counts, we charged him with possession of heroin and we charged him with possession of narcotics and the judge was then able to give him 30 years which he is now doing at Alcatraz. So that was all on possession of the same package.

ASSEMBLYMAN O'CONNELL: Is it common for the U. S. Attorney to proceed on two counts in most cases, that is, pleading the violation of the statute which provides for the maximum sentence and also pleading the other statute which provides for the minimum sentence in order that the judge may have some discretion in the matter of sentencing?

MR. CHAPPELL: What would do normally in this: I'll take a hypothetical case. Say that a narcotic agent makes two purchases of heroin, then we arrest the defendant, we would then charge two sales of heroin.

ASSEMBLYMAN O'CONNELL: Suppose there had only been one sale, now?

MR. CHAPPELL: All right, if there has been one sale, then we can charge him with three counts on the one sale. We charge him with the sale of heroin, we charge him with the possession of heroin, because prima facie, if he sold it, he possessed it; and then we would go further and charge him with the possession of the narcotic. Now then, what happens, here a man has committed...of course, it works better if we take it on two or more sales, which we always do.

ASSEMBLYMAN O'CONNELL: Yes, but that makes it too simple. I'm trying to find out how much discretion the federal judge has in these matters.

MR. CHAPPELL: The federal judge has discretion to act only on those counts which come before him. In other words, if we had the man on one sale, we would charge him with sale; we would charge him with possession of heroin; we would charge him with possession of narcotics. That would be three counts. Then, if the person was interested in entering a plea, unless there was some unusual mitigating circumstances, we would not concur in the dismissal of the possession count. We might say to the defense attorney, "Well, if you want him to plead guilty to sale of narcotics, we will drop the other two counts." If he agrees to plead guilty on one count of sale, and then goes before the judge charged only on that one count of sale, the judge then must give him the minimum five years without parole. We would not let him go before the judge only on that possession count, which can be suspended, or go under the two-year sentence unless there was some reason for it.

ASSEMBLYMAN O'CONNELL: Suppose you went under the two sections and the defendant waived a jury and submitted himself to the court and the court, having heard the evidence, decides that the defendant is not guilty of the crime which carries the maximum sentence, but is guilty of the crime which carries the minimum sentence and then he proceeds to suspend that sentence. Isn't this possible under the federal law?

MR. CHAPPELL: That's possible, but I've never seen it, well, no...it's not possible, either, for this reason: Unless the United States Attorney had a reason for letting the man go in front of the judge under that particular count, he would never go under that count...he wouldn't charge him with it.

ASSEMBLYMAN O'CONNELL: You mean, if the U. S. Attorney wants the maximum sentence, he doesn't plead under the statute which provides for the minimum sentence?

MR. CHAPPELL: No, we would just move to dismiss the tax count, as we call it, prior to trial, and then we would be there under just the heavier law.

ASSEMBLYMAN O'CONNELL: And then the judge does not have the power to find guilt under the statute which provides for the minimum penalty?

MR. CHAPPELL: No, we had a case very much in point on that fairly recently in the federal court. We had a man charged with sale, one count of sale, and he was tried on the count of sale and also tried on possession of heroin. Each count, however, has a minimum sentence of five years, so it was immaterial to us. So the judge, as a matter of fact, did find him not guilty of the sale, but guilty of possession. How he arrived at those facts is hard to say, but it made no difference because when he found him guilty of possession of heroin he still found him guilty of a count for which the minimum penalty for a first offender was five years.

Had we left him in there, had we included the other count, he could have found him guilty of that one, yes, and then imposed the minimum sentence, but he didn't go into court that way.

ASSEMBLYMAN O'CONNELL: Then, it's not possible for the judge to reduce the sentence by finding guilt under a section which is not.....

MR. CHAPPELL: No, sir, not unless he is so indicted. I might make this comment now. I believe that except for society and the dope peddlers and dope addicts themselves, nobody benefits more from mandatory penalties than the judges for this reason. I think that by and large your judges are very compassionate men, they are honest men, and I think quite frequently they are swayed by a very eloquent plea by an attorney and they are also impressed with the fact that they sit up before a courtroom full of people; and they are called upon then to come forth with a judgment taking a man's liberty away from him for five or ten or fifteen years, and they find it hard to do, they wrestle with their conscience. I have had judges here in town tell me, "Well, Chappie, you can't understand just what it is to be a judge." And I agree with them. I have never been a judge, so I agree that I can't understand it.

I have seen federal judges take refuge in this mandatory legislation. They sit back and say, "If I had my own way, I would give you less time, but my hands are bound, and I have to do this, and that..." They're acting in the welfare of society by putting that stringent penalty out and they still placate their own conscience and it does alleviate some of that pressure from them, by being able to, so to speak, pass the buck, just to say, "Well, my hands are tied, Congress has seen fit to do it this way, and I'm bound by it." I think it makes it a lot easier for a judge and I think it takes a lot of the psychological strain off him to have these mandatory penalties.

CHAIRMAN CRAWFORD: Thank you very much for your testimony. I'm sure it has been most beneficial. I would like to inform the committee that we are going to go through until 1 o'clock since some of our members must leave at that time. We, therefore, will take a five-minute recess at this time.

(recess)

CHAIRMAN CRAWFORD: The meeting of the Subcommittee on Law Enforcement Problems will come to order. Our next witness will be Norman Elkington, Chief Assistant Attorney General. Will you please identify yourself for the record.

MR. ELKINGTON:
NORMAN ELKINGTON
Chief Assistant Attorney General
of California

CHAIRMAN CRAWFORD: Do you have a prepared statement, Mr. Elkington?

MR. ELKINGTON: No, I have not, Mr. Crawford.

CHAIRMAN CRAWFORD: Can you inform the committee as to the efforts that have been expended by the Attorney General to combat the narcotics problem in the Los Angeles area and also if there is any opinion, any official opinion, of the Attorney General's office with regard to the practice of the superior court judges striking prior convictions?

MR. ELKINGTON: Yes, I will. With regard to your first question, Mr. Crawford, the Bureau of Narcotics Enforcement, the San Francisco area, will be augmented by eight new men. That will increase the Los Angeles staff from 13 as it presently is to 21. In addition to the additional personnel, there will be new equipment...That is, automotive equipment, chemical analysis equipment, and all of the different types of equipment needed by an up-to-date Narcotics Bureau Office.

Throughout the state, but particularly in the Los Angeles area, recently, the tendency has been toward the wholesale arrest system of narcotics arrests. Instead of, as in the past, making a case and then making an arrest, there has been a saving of the various actual arrests until such time as there are a great many cases on file. The purpose of that is to prevent pushers from feeling that the town is hot. If many arrests are made, they go out of business temporarily. If arrests are not being made, they are lulled into a sense of security and they are more inclined to push the stuff that they are selling. So there have been many of these that made the first break in the recent Santos-Graham-Perkins case, the murderers of Guard Young up in Chester resulted in the arrests of 56 people.

(A small portion of the testimony was not recorded due to technical difficulties.)

.....CHAIRMAN CRAWFORD: Thank you. Are there questions by other members of the Committee? If not, we want to thank you for appearing here today, Mr. Elkington.

The next witness will be Fred Finsley, Chairman of the California Adult Authority.

MR. FINSLEY:

FRED FINSLEY, Chairman
California Adult Authority

I am here at the request of the Committee to give our views as to how striking of priors affects us in our work. We don't have any strong feelings on this bill one way or the other. I do wish to point out how this might have effect, if any, on us in the handling of these cases. It normally wouldn't affect us one way or the other because we have all of the information that such prior would contain. We get the C.I.I., the FBI reports. In addition, we have the probation officer's report, the statement of the district attorney and the court. Over and above that, our guidance centers do make inquiry of everyone that is received. They stay in these guidance centers 60 or 90 days, that is, with regard to any narcotic use, whether or not the offender has come in on a burglary or a forgery and we try and make a determination of the narcotics used, the type, the length of time, how heavy the use was, so that when these cases actually appear before us we have all of the information that is available or that we could get anyway. With regard to how long they would stay, we do have this record, and we give effect to the amount of activity one has had in narcotics and whether a prior is pleaded or not. If he seems to be a vicious offender and a menace, we keep that person quite a long time regardless of the prior.

I had some figures that were given to me just yesterday by the Department of Justice with regard to the release of men who had been convicted of sales of narcotics. Now, this is not broken down as to whether it was marijuana or the opiates, heroin, it was just total sales, that is all our records showed. In 1957, we had 119 men who were paroled after having been convicted of selling narcotics. Now of that 119, 88 did not have any prior plead and proved and 31 did have a prior plead and proved. Of the 31 that did have a prior plead and proved, there were only 5 that were a prior felony, and of the 88 which had no priors, there was a like number, 5, who had had a prior felony conviction, although not proven and plead. And oddly, the 5 who had not had the prior pleaded stayed longer in our institution by a full year, did receive a longer sentence than the others. For possession, that didn't hold true. The ones that had a prior stayed slightly longer, not very much, but slightly longer.

We feel that since in the case of sale, there is the life term, that our hands are not in any way tied if a person is a big peddler, and we get very, very few of those. We seldom see anyone that you would call even a fair-sized peddler. Apparently, according to what I have picked up here, the federals handle most of those and the state gets only the smaller cases, what we feel are pretty much the victims of the narcotic trade, so that we don't have these big-time peddlers. In the years I've been around, I've only known two or three that I felt were even what you would call medium-sized peddlers. Most of our people are those who are addicted and do sell to try and get some more for

for themselves.

So that with the heavier penalties that we now have, and I do want to point out that back in the beginning of 1952 when the laws for both sale and possession were "nothing to six" we not only helped to sponsor, but did support legislation to increase the penalties. We felt that our hands were a little bit tied at that time with a six-year maximum. Subsequent to that time, the penalties have again been increased so that for a sale we have five to life, and if there is a prior pleaded, it is 10 to life. The lack of a prior having been plead does actually not in any way handicap us in dealing with a case. We have all the information in the record anyway. The part of the question that has been dealt with here as to whether or not they come to the penitentiary, we don't know anything about that at all.

CHAIRMAN CRAWFORD: Mr. Finsley, if the prior was stricken and the defendant received only a county jail sentence, they would never come under your supervision at all?

MR. FINSLEY: That is right, but we don't know what happens to those or anything about that. All we know about is the ones that we receive and that the prior, or a lack of it, having been pleaded doesn't affect us in the handling of a case.

CHAIRMAN CRAWFORD: Mr. Finsley, do you feel that the individual going into the county jail or the individual who comes under the California Adult Authority has a better chance of rehabilitation?

MR. FINSLEY: I don't know anything about the men that come out of the county jail, Mr. Crawford. We don't feel that we have any answer or cure to this for men coming into the State Penitentiary. We're groping. We have a special narcotics committee of the Board of Corrections delving into, trying to glean further and more information. We have a research project on narcotics going on in our own department now, trying to learn a little more.

Our information is very inadequate, we feel, and on the treatment end, we are experimenting with several things that we do have available. All of the program that we do have in our institutions including at our medical facilities group therapy and group counseling, we have no proofs that these things are affecting these men very much. We have impressions. We feel that as these people do gain more knowledge of what their underlying basic emotional problems are that they are better able to handle these things but we can't prove it as yet. We don't claim that there is any cure-all in that. We don't know. We're pretty baffled by this narcotics thing on the treatment end, the same as everyone else that I know of.

CHAIRMAN CRAWFORD: Under your medical program, have you used the treatment that Dr. Knox is using, that is, the massive doses of enzyme to alleviate the withdrawal symtoms?

MR. FINSLEY: I am not associated with the medical staff. I can't answer that categorically in that I am not fully cognizant of the medical side of the treatment. However, I think that it is a limited use in that by the time we get people having gone through the county jail and after the trial, they're pretty well dried out, they're not in the symptoms of withdrawal, so that I don't believe that we use this very much.

Out in the field, we are doing a good deal of experimentation with the nalline testing program wherein the nalline will reveal whether a man has had recent use within 48 to 50 hours, and I understand some of the clinics that do administer the nalline if it is positive and a man goes into withdrawal, does use thorazine and some other tranquillizers to help bring him back out of it. We have only had a very, very limited number of men who have shown positive in that testing. It isn't available all over the state. We wish it were, but in Alameda County and in Santa Clara County now it is available and we are cooperating. As a matter of fact, one of our conditions of parole requires anyone with any narcotics connection or use at all, that is, of the opiates, to render himself amenable and to take the nalline test.

CHAIRMAN CRAWFORD: Do you have any figures as to recidivism of your narcotic-law violators who have undergone...

MR. FINSLEY: Yes, it doesn't vary virtually at all from our regular run of recidivism. That is, the boys who have gone out with narcotic convictions, we receive about a third of them back, and it is actually a percentage point, a fraction of a percentage point, less than our general state average. Of course, we don't know what happens to them after they are off parole. In our out-patient clinic in Los Angeles, we have had men in the clinic for as long as three years on parole, over that, three and a half, who have not gone back to the use during this time. We have no way of knowing whether the next day after they're off parole and don't go back to the clinic if they use it or if they do not.

This is one of the places that I had in mind when I said that we really don't have adequate information in dealing with this problem, as much information as we would like because I have heard opinions vary all the way from 99% recidivistic rate on down to 30%. I don't know. We have no actual way of determining after a man is released from parole whether he goes back or whether he does not.

ASSEMBLYMAN BURTON: Do you have any statistical assistants...does the Adult Authority have anybody on their staff that can help you in compiling these statistics, or do you look to the Attorney General's Office?

MR. FINSLEY: We have no one on the Adult Authority. Up until just recently the Attorney General's office, the Bureau of Statistics, has furnished all of our statistics. With the addition of some research people in the Department of Corrections

staff, this is now in the process of being transferred over to our our research people so that the Department will be keeping its own statistics from here on out. From all the years back, since the inception of the Department of Corrections in 1944, it has been under the Attorney General's office, the statistical division.

ASSEMBLYMAN BURTON: Will the supplementation of your staff in any way enable you to more intelligently decide how best to deal with the sentencing of either the narcotics offenders or others?

MR. FINSLEY: We are getting more and more information all the time. The thing that I mentioned a few moments ago about getting all the narcotics-connected cases. This is only three years old. Up until three years ago before so much spotlight on narcotics, there was neither the staff, nor apparently was there any feeling that this was necessary. But when this began to be more and more of a problem, about three years ago at our guidance center level, we began to query these men and keep track and record all of the narcotics-connected cases as well as those convicted of a narcotics offense.

Our research department right now is working on further research problems. One of the things that the federal man mentioned this morning was brought out in a recent study we have made of our own people, and that is, that all of the users that we have, both marijuana and heroin, were delinquent, that is, had been in trouble with the law before they used narcotics. This was something we hadn't known before. We are working at this. We have this Committee of the Board of Corrections which is endeavoring to plug the loopholes in the information that we have heretofore had and were struggling to get more and more information on this all the time.

MR. BURTON: Does the Adult Authority have any program in questioning these fellows once they're incarcerated to ascertain if it's the certainty that punishment will be meted out, or whether it's the degree of punishment which is the deterrent to them in their use or their sale?

MR. FINSLEY: We don't actually know. When the penalties were increased this last time providing 10 to life for a seller with a prior, we have asked a great many of our men at the Board hearing level, and their impression seems to be that if one is addicted and he is trying to get another "pop" that he isn't thinking about the penalties very much. These are pretty severe withdrawal pains, and this is the farthest thing from his mind and so there is a question. Now, I don't actually know the answers. But there is a question as to whether or not the man who is addicted and trying to get more drugs whether he be a seller or he has to steal to do it or some other way of getting money that he is not at that time too impressed with what the penalties are. This is what they tell us.

ASSEMBLYMAN BURTON: Then I understand your testimony to be that so far as the Adult Authority is concerned in determining a sentence, they do not consider whether or not the judge has struck the prior conviction or whether he hasn't; that you make your determination based on all the information made available to you from the probation officer's report and the C.I.I. and all the rest of these agencies and groups. Is that your testimony?

MR. FINSLEY: Yes. The information that you mentioned, yes. Now, with regard to the striking, we don't know if the prior is stricken or not. We only know if one is pleaded and proven. It really doesn't make very much difference to us because we're going to handle the case according to what we have to offer and what we think should be done in a given case and his reaction and responses to the program and all, whether there's a prior or not.

ASSEMBLYMAN BURTON: In other words, in considering this A.B. 751, we should consider what impact it has on preventing people from getting into the realm of your authority, but not concern ourselves with any impact it may have on any impact it may have on any sentence you determine once they come within your jurisdiction?

MR. FINSLEY: That is right. We feel that the lack of of a prior is not a handicap so far as we are concerned. If it is a pretty bad case we're going to handle it as a bad case whether there is a prior pleaded or not.

CHAIRMAN CRAWFORD: Are there questions from other members of the committee? Mr. Allen?

ASSEMBLYMAN ALLEN: Do you make any differentiation between marijuana cases and heroin cases in deciding what length of time these men will be confined?

MR. FINSLEY: Ordinarily, this would make a difference, Mr. Allen.

ASSEMBLYMAN ALLEN: In what way?

MR. FINSLEY: It depends on the length of use. We have some younger chaps who have smoked some marijuana but not long and are not really heavy users that we don't feel that this man is as much of a menace as one who has had a heavy addiction habit of the opiates or who has been selling. We don't treat any of them lightly. But the bad thing about the marijuana user, and we treat that seriously too, is that in most instances the heroin user graduated from marijuana, and it's a vicious thing, and we take that into consideration too. But the statement I made was that one who has smoked marijuana lightly, I think, isn't quite in my opinion, as bad as a person with a long, long record of heavy opiate use and selling. We would make some distinction in those cases.

ASSEMBLYMAN ALLEN: Do you know anything about the rate of recidivism among these narcotics cases that don't go to the state prison, but are sent to county jail?

MR. FINSLEY: No, I don't know anything about that.

CHAIRMAN CRAWFORD: Mr. Burton.

ASSEMBLYMAN BURTON: Was the testimony you gave about users of marijuana or heroin...would that same slight difference apply to the sellers of marijuana and the sellers of heroin?

MR. FINSLEY: To a degree, but we look upon any selling as a very serious offense. Very serious, and I would say this...that in the average case, now, of course, you have a lot of mitigating circumstances in an individual case, but normally the tendency would be to give one who has been selling marijuana perhaps a longer time than one who has only used heroin, because the sales is something that we are very concerned about, whether it be marijuana or heroin.

ASSEMBLYMAN BURTON: Similarly, if one were selling heroin, you might, if all the other factors were somewhat the same, you would give them a more serious...

MR. FINSLEY: Yes. Oh, yes. Our figures show that the sellers stay on an average quite a little while longer than the possessor.

CHAIRMAN CRAWFORD: Thank you, Mr. Finsley, for coming here and testifying today. Our next witness will be Judge Sparling. Will you identify yourself for the record, please.

JUDGE SPARLING:

MAURICE C. SPARLING
Judge of the Superior Court of
Los Angeles County

I understand from your consultant, Mr. Robert J. Cook's letter to me of May 6, 1958, that I am invited here for the purpose of discussing the so-called problem of certain trial judges striking prior convictions particularly in narcotics cases, as quoted from his letter.

CHAIRMAN CRAWFORD: That is correct.

JUDGE SPARLING: I will proceed directly to that subject. In the first place, let me most emphatically say that in my opinion, there is no such problem, nor do I believe there ever has been. I believe that the so-called problem arises entirely from a lack of understanding of the facts. I am reminded of a sage, venerable old professor who used to repeat and repeat, "Get the facts." I assume that is what this committee is here doing and I am very happy to endeavor to contribute as

I can to the ascertainment of all of the facts in regard to this so-called problem.

When I say that there is no problem in regard to striking priors, I wish to particulary be understood in that I do not say there is no narcotics problem. There is a terrific narcotic problem, and it is a most serious problem. Probably no one is more conversant with the narcotic problem and with the necessity of eradicating it than are the judges of the Superior Court of this county. I personally have an average of probably 40 narcotic cases before me every day.

The criminal case load placed upon the courts by reason of the illegal possession, use or sale of narcotics is tremendous, and truly it is most serious. The effect of such use on the individual and society, however, is much greater, and in fact, beyond comprehension. I know of no judge who is not conscientiously doing all within his power to correct this evil.

The striking of priors in the case where such priors are stricken, however, has substantially no bearing whatsoever upon the problem. Here again, it becomes necessary to know the facts. Let me here emphasize that there is no policy of the judges that I have ever heard of in such regard. Each and every case rests upon its own particular facts, and priors are only stricken where deemed appropriate as to each individual case.

In many cases, I have found the priors to be true. In others, bases solely upon the facts of such case, I have stated that I purposely failed to find thereon in order to give the Adult Authority greater latitude in fixing the eventual term of confinement of the defendant. I have not wanted to give the defendant the benefit of having his prior stricken, which would indicate that it is not true; I didn't want to have him feel that he has gotten away with something. On the other hand, I did not want to tie the hands of the Adult Authority in the eventual incarceration of that individual.

I, quite naturally, think the latitude afforded me by the Legislature and the State Supreme Court is sound, and that my judgment and sentence in each case has been sound. To see if the law and the application thereof is sound, we must, of course, examine the law, the facts, and the courts' application of the law.

The use of illegal narcotics is, of course, in the opinion of most informed doctors and penologists, a disease, and the user should be considered and treated as a patient. Such patient's original introduction to such use is without doubt wrong and criminal, but once addicted, he or she truly needs help.

As stated by a very eminent legal authority, quoting..."the indeterminate sentence law permitting a qualified and expertly staffed agency to make the sentence fit the defendant, patient he should be called, rather than a rule-of-thumb restriction for the crime, treatment for illness or nonconformity would be better terms, is the most significant advance of penology in the last century."

Another prominent jurist, incidentally, not one of our superior court judges of this county, also recently publicly stated that narcotic addicts should be treated as sick persons rather than as criminals. He continued by comparing the so-called British control system with our own, pointing out that in Britain with its population of 50 million people, there are only 300 to 400 addicts, as compared with about 60,000 in the United States. He further stated, with which I am in full agreement, that peddlers, the non-addict smugglers, and the organizers of narcotic ring operations are the true public enemies.

There is no doubt but what narcotic addicts most often commit public offenses in order to support their narcotic habit, and consequently, in addition to giving them all possible medical treatment to cure their addiction, they should also be controlled from a criminal standpoint.

A great deal needs to be accomplished in the matter of education of the public, the churches, schools, press, television, radio, could well undertake such a program informing the parents and younger generation of the evils and ultimate effect of the illegal use of narcotics. The right kind of constructive publicity can be most helpful.

Formerly, and prior to the indeterminate sentence law of 1917, the superior court judges used to actually fix the term of incarceration in state prison for every defendant. Under the Prison Reorganization Act of 1944, the Adult Authority was created. The Adult Authority consists of seven specialists appointed by the Governor, whose duty it is to actually fix the term of incarceration for every defendant sentenced to state prison. We are now operating under such law, and the superior court judges in sentencing a defendant to state prison do not and are not permitted to fix the actual term of imprisonment. The merely sentence the defendant to state's prison "for the term prescribed by law." The Adult Authority then takes over and after the defendant has been in prison six months or so, with the benefit of all the information had by the trial judge, plus the reports of their doctors, penologists, psychiatrists, and staff, including the reports as to how the defendant is responding to supervision and getting along with the other inmates, the Adult Authority fixes a preliminary period of anticipated incarceration. This period is, however, subject to correction, upward or downward, as later facts may develop.

I am certain that I can speak for all the superior court judges throughout the state in saying that we have implicit confidence in the ability, integrity, and sincerity with which all the members of the Adult Authority perform their duties, and that the present system is the best that has so far been devised.

By use of this system, sentences for like offenses and like circumstances and backgrounds of defendants are fairly equalized. Unequal sentences from different judges throughout

the state are thus eliminated, and a fair degree of uniformity is attained. Apparently, the legislative intent is that reasonable discretion should be placed in the superior court judges. The modern theory of incarceration is that the penalty should fit the individual. The old theory was that the penalty should fit the crime. In other words, that every person guilty of any certain crimeshould receive a like sentence, irrespective of that person's mentality, whether a moron, with the intelligence of a child of five, or a college graduate with an exceptionally high I. Q. The absurdity of such should be at once apparent. For that reason, reasonable discretion has properly been vested in the judges and in the Adult Authority.

Formerly, Section 11,712 of the Health and Safety Code provided that any person convicted of possession of any narcotic "shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year, or in the state prison for not more than six years." In 1953, such section was amended to provide that any such person "shall be punished by imprisonment in the county jail for not more than one year or in the state prison for not more than 10 years," thus eliminating the 90-day minimum period and leaving the minimum period to the discretion of the trial judge.

The modern theory that the term of imprisonment should fit the offender rather than the offense is doubtless predicated upon the fact that approximately 95% of all defendants sent to state's prison are released back to society and the modern trend is to rehabilitate such offenders in the shortest period possible so that they may be returned to society as good, law-abiding, useful citizens.

Obviously, each defendant, each individual, depending upon his heritage, background, education, mentality, social standing, financial position, and so forth, responds differently to county jail or state prison time. I think if you or I were to spend one day, one night, in the county jail, that would probably cure us of most anything. To some, two days in the county jail is as much of a deterrent as six months in the county jail or a year in state prison might be to another. Again, rehabilitation is the principal factor in modern thinking, although of course, the necessity of deterring others must not be lost sight of.

However, it may be noted that with our large urban populations, little publicity, most unfortunately, is given to sentences imposed upon law violators. The general public are not sufficiently informed thereof, and the deterrent value of such sentences is being largely lost. I have suggested that possibly if we could get the press, radio, and television to cooperate, and to say that on any given day, 42 narcotic possessors went to prison or 18 sellers went to state's prison and that were continuously pounded right to the public, some benefit might be obtained from it.

To return again to the matter of sentencing, the

the present law requires that one convicted of possession of a narcotic is subject to a sentence of one year in the county jail or one to ten years in the state prison. I should have said up to one year in the county jail or one to ten years in state's prison. One convicted of selling narcotics is subject to up to one year in county jail or five years to life in state's prison. If a defendant has a prior felony record, he is subject on conviction of possession of narcotics, to be incarcerated in state's prison from two years instead of one without a prior, to 20 years. When the defendant has a prior, however, whether such prior is pleaded or proved, the practice of the Adult Authority has consistently been to consider two years as a minimum period of incarceration. Consequently, the court's action in striking the prior or not finding thereon has actually no effect so far as the minimum period of incarceration is concerned. Thus, it is necessary for one to know the facts before criticizing.

All that finding a prior to be true would do is to tie the hands of the Adult Authority in the event that in some extraordinary case such Authority found the defendant should be released in a shorter period of time. Having complete confidence in the ability, integrity, and fairness of the members of the Adult Authority, the judges in many cases have either stricken the prior or purposely failed to find thereon in order to give the Adult Authority greater latitude in fixing the period of incarceration of the defendant, and such is invariably stated if they do not make a finding upon the prior. Certainly, no problem has arisen from such. If there is the slightest doubt in such regard, it would be well to examine the eventual sentences of the Adult Authority in such regard and see in what percentage of cases, with priors, any defendant has been released short of two years. We had Mr. Finsley's testimony here this morning, and I am sure that this bears this out completely. I repeat, there is no problem in such regard.

Now, let us consider the facts in regard to the maximum period of incarceration on cases of possession. The maximum period is ten years without a prior and 20 years with a prior. The records show that even with a prior conviction of a felony alleged and found to be true, it has not been the practice of the Adult Authority to in any event keep the defendant in state's prison up to the ten-year maximum. Consequently, whether a prior conviction of a felony is proven, stricken by the judge, or with no finding made as to the truth or falsity of such prior, the normal maximum term of incarceration in state's prison is not affected.

Rehabilitation is the prime factor for consideration, and experience has shown that with 95% of all state prison inmates being released back to society, theoretical rehabilitation at least is invariably accomplished with a period of incarceration short of this ten years. The evidence is that where defendants are retained in custody beyond the period of maximum rehabilitation both the defendant and society are harmed. The Adult Authority has requested the judges to either not make a finding upon the priors or to strike the same.

CHAIRMAN CRAWFORD: I beg your pardon, Judge. Would you repeat that, please?

JUDGE SPARLING: The Adult Authority has requested the judges to either not make a finding upon the priors or to strike the same.

CHAIRMAN CRAWFORD: Do you have documentary evidence to that?

JUDGE SPARLING: Yes, sir.

CHAIRMAN CRAWFORD: Will you furnish it to this committee, please?

JUDGE SPARLING: I was just coming right to that, but I'll get it for you immediately. The Adult Authority has told judges verbally that is their wish, and on April 8, 1958, in order that there could be no question about the matter, I wrote Honorable Fred Finsley, Chairman, Adult Authority, 502 State Office Building No. 1, Sacramento 14, California:

"Dear Mr. Finsley:

As you are doubtless aware, in instances the Criminal Department judges of this court for some time in sentencing defendants to state prison have been 'purposely not making any finding upon the alleged priors in order to give the Adult Authority greater latitude in the handling of the defendant's case' or have stricken the priors. It has been my understanding, and I believe, the understanding of the judges in general, that such was the desire of the Adult Authority and that such practice resulted in enabling the Adult Authority to evaluate the defendant and fix the proper and just term of incarceration.

It is also my understanding that this practice has in no wise prevented the Adult Authority from giving any defendant a maximum period of incarceration if such appeared necessary, but that it did assist the Adult Authority in fixing a reasonable and proper minimum period of incarceration in justifiable instances.

Now the superior court judges of this county are under severe criticism by the press, radio, and television commentators for such practice, (primarily in narcotic cases), and we have been further criticised by various opinions written by Appellate Justice Walter J. Fourt, most recently referring to his opinion in the case of People v Barbera, just released.

I have personally felt that our practice

in so not finding on the priors was not only in accordance with the general plan of the Legislature in leaving the matter of ultimate sentence to the Adult Authority (note the 1957 amendment to the Penal Code, Section 969A, changing the word "shall to "may," in regard to pleading priors) was in accordance with the wishes of the Adult Authority, but also resulted to the best interests of the public at large and the individual defendant and to the reasonable conformity of sentences throughout the state.

I am thus writing for an expression of the opinion and wishes of the Adult Authority in this connection and would like, if agreeable to you, to have your permission to publicly make use of such reply as you may give to this letter.

Hoping for the pleasure and privilege of again seeing you soon, with warmest regards, I remain

Cordially yours,"

Under the date of April 15, 1958, I repeat, my letter was April 8, under date of April 15, 1958, I received the following air mail, special delivery letter to me from Mr. Finsley:

"Dear Judge Sparling:

Reference is made to your letter of April 8, setting forth the views of the judges of the Criminal Division concerning the aggravation of sentences and asking for the views of the Adult Authority.

Over the years, the Adult Authority has felt that the provisions of the statutes, wherein a prior felony could be pleaded and proven to aggravate the minimum sentence to five years was a handicap in our work.

The Board has always felt that where a person has had a long criminal history or is a vicious person, these are factors that could well be taken into account by the Adult Authority in the fixing of the final sentence. There are many cases wherein a prior felony is not plead and proved, and the individual stays in prison a long time because he has failed to make the progress that would indicate he could make a reasonably good adjustment in the free world. In other words, the lack of a prior is not a handicap to us.

On the other hand, there were cases of old alcoholics with rather innocuous crimes that we have had to either keep five years or grant parole for a portion of the five years knowing that the man was a doubtful risk because of his alcoholism. It is in this latter group of cases wherein we have felt that our hands were somewhat tied in properly dealing with the case.

Under the new amendment to the Penal Code, it is no longer mandatory that priors be pleaded and proven, but discretionary. (969A, Penal Code). Another amendment of the 1957 Session of the Legislature was to reduce the aggravated minimum from five years to two years. These two amendments eliminate the undesirable features of the Penal Code with respect to priors. We have complete confidence that the courts will properly exercise their discretion in these matters.

We are very much concerned with the continued increase in the use of narcotics and the increase in criminal offenses committed to support narcotic addiction. Several years ago the Adult Authority sponsored legislation to increase the penalties for narcotic offenses to give adequate time for treatment and for the protection of society.

Since that time the penalties have been further increased. Certainly, we now have maximum terms entirely adequate to hold these offenders as long as necessary.

We recognize that selling furnishing, and transporting narcotics are extremely serious crimes. However, the maximum term for these offenses, which is life, is not affected by the pleading and proving of prior convictions. Therefore, the Adult Authority is in no way hampered in fixing a term sufficiently long to give whatever protection to society that is indicated by all the circumstances of the instant offense together with the prior record, which is always attached anyway.

Cordially yours,

/S/ Fred Finsley"

With regard to a defendant convicted of selling illegal narcotics the prescribed prison term is without a prior, five years to life. With a proven prior, ten years to life. With a proven prior, ten years...it thus is shown that the Adult Authority can fix the maximum term at life whether the prior is proven, stricken, or not. The striking of the prior does not in any way affect the maximum term that

may be given. It merely ties the hands of the Adult Authority so far as fixing a lesser term in cases which they believe may be meritorious.

We have, so far however, been discussing only the prescribed terms of imprisonment. An understanding of the Adult Authority's right to parole a defendant must also be had. The Adult Authority may parole, MAY parole, any prisoner after he has served one-third of his minimum term. In other words, the Adult Authority may parole a prisoner after he has served 20 months, one-third of five years, where he is convicted of a sale without a prior and at the expiration of 40 months, one-third of ten years, where he is convicted of a sale with a proven prior.

But the Adult Authority always takes the prior into consideration, just as Mr. Finsley told you here this morning, whether found upon or not. So once again, the finding on a prior merely results in tying the hands of the Adult Authority where there may be a meritorious case for paroling the defendant short of the 40-months' period. Having implicit confidence in the ability and integrity of the Adult Authority, and knowing that the members thereof with all of the records, conduct in prison, and other information available to them, they are in a better position to actually finally determine the eventual period of incarceration for any prisoner. Many judges in the interest of justice and society do so strike the prior. Nothing but benefit can come therefrom, so long as the Adult Authority continues to intelligently perform its duty as it has in the past.

The judges are certainly not coddling narcotics law violators. They are actually intelligently leaving the definite period of incarceration to the Adult Authority, the entity best able to fix the same. Every case must be decided and treated on an individual basis. All humans are different and react differently.

A young man 28 years of age convicted of selling a small amount of narcotics to a friend who had formerly been convicted ten years earlier when he was 18 on possession of a marijuana roach and who has had no arrest records during the ten-year interval certainly should not be classed and treated, generally speaking, the same as one 28 years old convicted of a large sale operation and who has had a continuous record for the prior ten years of narcotics violation, armed robbery, forgery, attempted murders, and so forth. The placing of the first named youth in state's prison for a minimum term of ten years could do irreparable harm to him and to society. If the trial court, in its discretion, strikes the prior felony, his minimum term in state prison is five years and the Adult Authority's hands are not tied in releasing him when they feel he has been rehabilitated, remembering that they may retain him for life.

It should be borne in mind that the Adult Authority

in fixing the ultimate period of incarceration for every defendant has before it the entire record that is before the trial court at the time the trial court sentences the defendant and in addition has the benefit of observing the defendant, his attitude and conduct while in state's prison, has the penologist's reports, the psychiatrists' reports, and the reports of the staff. Not only is the action of the judge in striking the prior, or purposely not making any finding thereon in order to give the Adult Authority greater latitude in the fixing of the term of imprisonment for the defendant done in the interest of justice and for the benefit of society, but it is particularly in accordance with the apparent intent of the Legislature and in accordance with the law as laid down by the Supreme Court of this state.

Prior to 1957, Section 969A of the California Penal Code stated that in cases where the information or indictment upon which the defendant is being tried does not charge him with all of his prior convictions of a felony, yet "shall be forthwith amended to charge such prior conviction or convictions." In 1957, said section was amended by the Legislature to change the words "shall be so amended" to "may be so amended," thus showing the legislative intent that priors need not be even alleged.

Furthermore, in the case of People v Burke, reported in 47 C.2d 45 decided by the Supreme Court of this State, on September 21, 1956, the Supreme Court approved the practice of trial judges in striking the priors in the following language:

"The procedure of striking or setting aside or dismissing a charge of a prior conviction or any multiple counts or allegations of an indictment or information, at the time of sentence is not expressly provided for by the statutes, but it is commonly used in trial courts not only where the prior conviction has not been legally established but also when the fact of conviction has been shown that the trial court has concluded that in the interests of justice, defendant should not be required to undergo a statutory increased penalty which would follow from judicial determination of that fact." The Supreme Court then cites many cases justifying and upholding such practice.

In fact, in that very case, the District Court of Appeal, which had previously heard the case in its decision criticized the trial judge for having stricken the prior and the Supreme Court took the case over in such regard and reversed the District Court of Appeal, affirmed the trial judge and upheld such practice. Such is the law as it stands today.

In the case of People v Barbera decided April 7, 1958, by Division One of the Second District of the District Court of Appeal and reported in 159 A. C. A. 216, the Justice writing that opinion stated, in criticizing the judges of the Los Angeles Superior Court in the matter of striking

priors, he states, quoting: "The failure of the judge to find as to the truth or falsity of the prior conviction amounts to a finding that the prior was not true." Then he goes on to state: "Such a finding in turn has the effect of reducing the sentence of the defendant by about one-half."

Personally, neither I nor many other judges with whom I have discussed such statement have been able to find any law or fact supporting such statement. The law and facts as I have herein stated, do not support it, nor does the letter to me from the Adult Authority dated April 15, 1958.

Incidentally, a petition is now pending in the Supreme Court of this state relative to their taking over that very case because of such statement by the Appellate Justice. The Supreme Court previously took over the case of People v Burke, which I have just referred to, in which the same Justice who wrote the opinion in People v Barbera had written an opinion criticizing the superior court judges for striking priors, and in such Burke case, the Supreme Court stated that it was perfectly proper for trial judges to strike the priors.

Needless to say, when so striking the priors, the superior court judges of this county have been following the laws laid down by the Supreme Court. Thus, when one considers the background, legislative intent, purpose in striking alleged priors, desire of the Adult Authority, and the benefits to society, it is made clear the trial judges are well justified in so striking such priors. The ability of the Adult Authority to retain a prisoner in state prison for ten years for the mere possession of any illegal narcotic has been found to give the Adult Authority ample opportunity to properly incarcerate any prisoner on such charge without regard to any prior having been stricken. Similar ability to give life to anyone found on the sale has given them no difficulty either. They have ample maximum periods. Of course, the judges have no compassion on the real sellers of illegal narcotics, and their sentences are practically, without exception, state's prison.

Comparison has been made between sentences imposed by the state courts as compared with the federal court. Again, it becomes necessary and important to know the facts. The fact is that we in the Superior Court have before us very few, VERY few, of the real narcotics sellers. In big narcotic ring operations, the local police, sheriffs, and district attorneys work on the cases with the federal authorities and the cases are then most invariably prosecuted in the federal court and naturally get the publicity and the long sentences. What we get in the Superior Court are almost invariably the little fellows dealing in comparatively small quantities, normally selling to other users in order to support their own habit. In my entire time on the bench, I do not believe I have ever tried a case involving a sale of over ten dollars, with one possible exception, where, if I remember correctly, an undercover officer bought $40 worth of heroin, and that is the maximum I believe I have ever tried.

We hear comments on how striking penalties have resulted in fewer cases in other states. I don't know the facts about those states. Maybe there the officers whose duty it is to prevent the illegal transportation of narcotics into such states are admirably performing their duties. I do know, however, that there is no other state facing Mexico on the south and the Asiatic mainland on the west from which heroin comes with the great amount of coastline that California has. Our enforcement problem here is far different than that confronting any other state. If those responsible for keeping illegal heroin and narcotics from coming into the state were able to perform their duties, our narcotic problem would largely disappear.

I personally feel that our present laws are fully adequate to care for the cases we get...a person, for sale, can get life. I don't know how anyone can well get more, unless we wish to make it the death penalty.

I further feel that our laws are being properly administered by the courts and that the purport of Assembly Bill 751 should not be enacted. If enacted, it would probably cause many defendants who now plead guilty to demand jury trials with the delay and expense thereof, but also with the probability that many more would be acquitted. Inexperienced lay jurors are entirely too often taken in by the fabricated stories of the defendants.

The adoption of Assembly Bill 751 would be a great disservice to the public. This committee probably should have the benefit of the knowledge, experience and pleading of the attorneys who most largely handle narcotic cases, and I am happy to submit a resolution from their bar association strongly endorsing and supporting the action of our Superior Court Judges in regard to the matters herein referred to. (EXHIBIT 7)

Thank you, gentlemen.

CHAIRMAN CRAWFORD: Judge, thank you. Since it is time for lunch, I would like to adjourn for lunch at this time, to take up at 2 o'clock and request you to be with us at 2 o'clock for questions.

(Recess)

2:05 P.M.

CHAIRMAN CRAWFORD: The Subcommittee on Law Enforcement Problems will come to order. We are in the process of having Judge Sparling as a witness. If he would resume his seat. I might say for those present that it is regrettable that some of the members of the committee have had to leave because of other commitments; they must catch connecting flights. However, since this committee started with a quorum, it may, under our rules, continue and operate as a committee to hear evidence.

JUDGE SPARLING: Mr. Chairman, may I first - I alluded to a letter that I have written to the Adult Authority and the answer and the resolution of the Board of Trustees, Bar Association. May I file those, sir? (EXHIBITS 1 and 2)

CHAIRMAN CRAWFORD: We would appreciate your filing them with the Committee.

Judge Sparling, I have some questions. Throughout your testimony you have made repeated reference I believe this is your quotation: "The Court's action in making no finding on the prior, or striking the prior, has no effect on the Adult Authority." I would like to inquire as to how this statement can be substantiated where the striking of the prior has resulted in the defendant being placed in the county jail and not coming under the jurisdiction of the Adult Authority.

JUDGE SPARLING: Of course, Mr. Chairman, I have limited my remarks solely to the matters of state's prison sentences. There is no question the law provides that the court may incarcerate one, I mean, for up to one year in the county jail or state's prison; and where the court does, in the interest of justice, strike the prior or fail to find on the prior, if he places the defendant on probation, of course, he suspends proceedings. The prior is still there. He can bring it up any time the probation is revoked. And the prior is still available if he wants to find on it, if he feels there is cause for it at that time, he may do so.

If he sentences him to county jail time, it is because of the facts of the individual case. The law authorizes him to give them county jail or state's prison, and where he does that and does give them county jail time it is because he is exercising his discretion, which in my opinion is very necessary that he have that discretion to give the individual county jail time instead of state's prison time.

CHAIRMAN CRAWFORD: Judge, I have some excerpts from cases that you have handled yourself. I should like to read them and then ask your opinion as to some of these particular cases. The first is People v Diggs, Superior Court No. 190325. Defendant is charged with one count of

of possession of heroin, one narcotic prior as alleged. Minute Order of July 8, 1957, states that Judge Sparling sentenced the defendant to San Quentin for the term prescribed by law, suspended this sentence, placed defendant on probation for three years; defendant to spend first four months in the county jail. Minute Order states as follows: "No finding as to prior conviction." This particular one, of course, removed the defendant from the Adult Authority or possibility of supervision by the Adult Authority.

We have People v Sanchez, 188420. One narcotic prior. Prior was stricken. Served 45 days in county jail.

People v White. Case No. 192146. Possession of heroin. One narcotic prior. Court makes no finding as to prior conviction. Probation for three years, on condition he spend first 120 days in county jail.

People v Villa. Case No. 190914. Count One of indictment charges defendant with selling heroin. Count Two, the sale of heroin. Count Three, charge of sale of heroin. One narcotics prior alleged. Case tried before you without a jury. Defendant convicted on count three, counts one and two dismissed by the Court. In this particular case, we have a man...this case, incidentally, was January 16, 1958, Docket No. 190914. His prior record, 1950-vagrancy, 1951-vagrancy, 1951-petty theft,1951-possession of narcotics, 1951-burglary, 1953-six months county jail for suspicion narcotics, 1955-burglary, 1955-burglary, 1955-escape, violation Penal Code. Here is a man with a quite extensive record, and yet, and involved in selling heroin, the court made no finding on the prior, one year in county jail.

People v Lynn Harris, 189007. Indictment charges defendant selling heroin, two priors, one larceny on government reservation, the other, grand theft. Defendant having duly pleaded guilty, violation of Section 11500, Health and Safety Code of the State of California. Prior convictions having been stricken, it is therefore ordered, adjudged and decreed that said defendant be punished by imprisonment in the county jail, County of Los Angeles for the term of one year.

People v Sunderman, case No. 188051. Possession of heroin. Narcotic prior. Probation for three years. First 45 days in county jail. Prior conviction struck.

Here's another. This man, in 1948, convicted of violation of 18 U.S. Code 466; in 1950, suspicion, Section 503, rebooked on 503, served one year in county jail, less time served; 1951 violation of federal probation, served one year; 1952, grand theft, given one to ten years; 1954, released on parole; 1957, charged with possession of narcotics.

Now, these are only a few of the cases, but it

seems to me that your action in these particular cases does not coincide with your statement that we should have faith in the Adult Authority and that striking the prior, or no finding on the prior, has no effect on the Adult Authority. I think this very definitely sets forth that the Adult Authority has no control where this has occurred.

JUDGE SPARLING: That is very true, where the court sends them to county jail. However, as I have stated continuously during my statement, you must know the facts. If we simply take a little excerpt such as you have, where a person is charged as the record may show and may not show in many instances show no disposition, but in any event each case is decided upon an individual basis, predicated upon the facts before the court. Now no one, including your good self, sir, cannot with any degree of comprehension whatsoever gain anything from such a record as that.

Have you read the probation report? Have you read the evidence? Do you know what the age of that defendant was? What his family situation was? I can give you offhand probably a lot of illustrations which would show you immediately the reason why courts do send some to county jail and instead of state's prison. We have just innumerable instances where I have given them before the Grand Jury; I have recited many of these instances and could give you possibly one. A chap had been arrested previously for possession of marijuana many years before and had committed no offenses from that time up to the time...this is five or ten years later...he is arrested and charged with sale. The facts were that a neighbor of his had asked him...he was out of a job and he had asked the neighbor what jobs there were and the neighbor said, "Well, you can do some delivering for me if you want to." He told this defendant, "For instance, you just take this down, you meet a man in an automobile down at such and such a street, and you give him this package and collect the money from him." He took it down, gave it to...this happened to be an undercover officer in the automobile...collected the money, was charged with sale.

Certainly, that is not, in my opinion, the type of case where he should probably go to state's prison for five years or ten years to life. You might say,"Well, he should have known better...he should have known what was going on." Your Court decides the case upon evidence...the facts before it, not upon surmise. A man is presumed innocent until he is proven guilty. You have go to try every case upon an individual basis. If you want to make it simply a punchboard proposition, you don't need judges. Just have, when the District Attorney charges them or they plead guilty to some offense, why you punch their button, and it's automatically so much state's prison term or what-not. It would serve no purpose. That's why discretion is placed in judges, and I assure you again, sir, that you cannot gain anything from merely reading such records as you have read.

You speak of the one in 1958.....that was when.... that is a time when I was in the Master Calendar Department. Priors on two cases were dismissed. You say the Court dismissed them. The Court dismissed them on the motion of the District Attorney. I don't remember the case. I have 100 to 150 before me every day. I don't remember these individual cases,but you can pick out a few hand-picked cases such as you have, and you can say, well, on the record that looks bad.. but sir, if you'll get the probation report...if you'll get all the facts, then you can make some intelligent appraisal of why a Court did what he did. Without that it is impossible to do so, I assure you.

CHAIRMAN CRAWFORD: Judge, I want to clear up one misconception that you might possibly have. There is no basis for the statement that we as a committee should feel that a judge should be a pushbutton. I believe that the investigation today is concerned with the striking of a prior or no finding on the prior. We have not at any time stated that the judge should convict upon the filing of a complaint by the District Attorney. I believe that is unfair to the Committee to make such a statement. Certainly, you are there to listen to the evidence and to rule upon the evidence as it applies to the law. But I do feel that this Committee over the past two years has heard evidence, has conducted hearings throughout the State of California....We have attempted to assimilate evidence to see how best this problem can be best attacked. We are concerned with the situation in Los Angeles. You have one of the two best police departments in the entire United States. They are doing a fine job. You have a sheriff's office in this county that is doing an excellent job. You find that the Attorney General, Pat Brown, has done a fine job in assigning one-third of his staff to combat the problem in Los Angeles. You heard the testimony of the federal agent this morning, who stated that this is one of the worst spots ...that they are concentrating their efforts here, trying to clean it up. Yet, when you look at the statistics of the State of California, if you will exclude Los Angeles County, you find that the rise in addiction is no higher than the rise in population, but yet when you include Los Angeles County, you find that the rise of addiction in the State of California is 18 per cent higher than the rise in population in the State of California. This is a cesspool of crime insofar as narcotics addiction. We are looking for the cause. We would like to try and find what the reason is.

In our investigation we have found that it is the practice of certain Superior Court Judges, and we have more complete files. I was trying to save time in just reading a few of the cases, where it is a practice to either make no finding on the prior or to strike the prior so that the defendant does not come under the jurisdiction of the Adult Authority, or comes under the jurisdiction of the Adult Authority without having the more severe penalty, which I believe as a member of the Legislature, was intended that with the first offender, the judge should have discretion.

But that because of certain judges abusing the discretion where there have been prior convictions, that we must infringe upon the discretion and provide a more severe penalty because we don't want coddling of criminals. That basically is our problem, our concern, and we are trying to do something about it.

We certainly don't want judges to be pushbutton judges. You are to hear the evidence; you are to uphold your sworn duty. We expect that of you, and I am sure that we will receive it. But we do feel that those states such as Ohio, Oklahoma and Louisana, who have made more severe penalties who have cleaned up their narcotics crime rate, as well as other crime rates, are solving the problem. We are not solving it here in California by making it easier on the addict or the seller. I believe Mr. Allen has a question.

ALLEN: Judge, I want to make a statement, first of all, I don't think any of us feel that in conducting this hearing we are inquiring into or reflecting on the integrity of the bench here in Los Angeles. There is no question involved here at all...that anybody is suggesting that what the judges have done in these cases is illegal. But we do have this policy question, and under the Code, for example, Section 11712, if the defendant is charged with possession of narcotics on the first offense he can be sent to the county jail or in the alternative, to the state prison. But on the second offense, there is a mandatory sentence to the state prison. And yet we do find, notwithstanding that code section that because of this power of the court to dismiss the prior, that some of these second offenders are going to the county jail and while they are put on probation, maybe, for several years, the time they serve actually may be only a few months.

What I wonder is how are you stopping the narcotics traffic when you have a second offender, particularly in these heroin cases, when you send him to the county jail?

JUDGE SPARLING: You have to place discretion someplace in my opinion, because you will find that every case is different from practically every other case.

If you would but review on any of these cases, whether they are mine or anybody else's, review the evidence, review the probation officer's report, get all of the facts, I think you will then see why the court did what he did. And I think you will say the court did right in doing what he did under the facts of that case. Now, we have, as I say, I have from 100 to 160 before me every day. If you will take the entire run of the mill, you will find that a great many of those, in fact our records show that 93 per cent of those convicted of sale of heroin go to state's prison. You will find, if you take quantity-wise, you will find that the records are very, very high.

Judge Burke is here, and I believe he will have this

information you just have to have the facts. You can't just take a transcript and see that he is charged with so and so, he has such and such a record previously, and such and such is done, and this is all. If you will get, and I invite any of you to do that, to get the transcripts, get the probation officer's report, find out the facts about it, and then if you disagree with what the judge does, talk with the judge. We can always learn more by talking with a person than about him. If we will just talk with him, we will find out that we get a different appraisal, a different situation, a different factual understanding of it entirely.

I have had that brought to my attention so vividly here recently. I was panned here some time ago by some folks that thought I had given a sentence, and I wrote them. I wrote them all and told them all just why I did it. I have here...brought with me a record here where one writes in great apology, "Judge," he says, "I owe you a great apology. I didn't know the facts. What I got from the press didn't reveal all of the facts at all." And she ends up, "This is the kind of a judge we need," and furthermore apologizes and says, "Now I find out, who am I to criticize or to judge a judge?" But if you get the facts, you will find out, gentlemen, you get a far different viewpoint than you will by just picking a few hand-picked cases.

ASSEMBLYMAN ALLEN: Do you think that any of these narcotics offenders are rehabilitated by serving time in the county jail?

JUDGE SPARLING: I think so. Yes, when you say any of them. Now, you are taking a very broad view. Take the person, a young man, who for the first time has just started to...maybe his first time he ever smoked marijuana, and you give him some time in the county jail with probation hanging over his head, and the possibility of having it revoked and go to state's prison, I think it's going to be a pretty good cure.

ASSEMBLYMAN ALLEN: How about the second time he does it?

JUDGE SPARLING: All right, now, let's take the second time. If he did it when he was a youngster, ten years ago, and now again has fallen in company with someone who takes it...I can give you an illustration where a man was up before the court...he had been severely burned...first-degree burns on practically all of his body...and he was in terrific pain. He had previously been convicted of using marijuana. He was found in possession of marijuana. He was smoking it because of those terrific burns. Now, there is a second case, but that is not a case for a man to go to state's prison. These are addicted...it's a disease. They've got to be treated. After they are once addicted, as I stated primarily this morning, in the first instance, it's wrong...there's no

question that the party who got them to using it is criminal, but once they're addicted or in a case such as I have given you now, and that may be one of the cases you have before you, I don't know...but you will find when you get the facts that any of those cases, I think you're going to agree with the judge that he did the right thing...more that you cannot criticize it all without knowing the facts, gentlemen, you just cannot do it intelligently.

ASSEMBLYMAN ALLEN: Take another case, where you have a man who is convicted of possession, his second offense. Under Section 11712 he is found to have had a prior conviction; his maximum sentence is 20 years in the state prison, but if the prior is stricken, then the maximum in the state prison is 10 years. If you send him to the state prison and strike the prior, discretion of the Adult Authority is cut off at the end of ten years. You can't put him on parole for longer than ten years.

JUDGE SPARLING: True.

ASSEMBLYMAN ALLEN: And, by striking the prior conviction, actually you're cutting down...you are cutting in half the supervision the Adult Authority can give over the man, aren't you?

JUDGE SPARLING: That is correct. The answer to that, as the Adult Authority gives it to us, is that they don't need more than the ten years; that that is the maximum period they keep them in any event and that nothing is gained by doing it. There is that possibility that where we have stricken the priors in those instances, we have done it as we understood it at the request of the Adult Authority so as not to tie their hands to give them the tools with which they could best work and in the interests of justice and society. As far as the individual judge is concerned, it makes it just as easy for him to say, state's prison and the prior, too, as it is to say state's prison. In fact, it is easier than by not finding on the prior in order to give the Adult Authority greater latitude.

It doesn't make any difference to the judge. Inasmuch as the Adult Authority is the one who eventually has to fix the time, where they request it...I have been trying largely to follow their request. I think many of the other judges have done so also, but it's in the interest of justice to try to help the Adult Authority and to do what they feel is best as they have the best opportunity to pass upon the eventual incarceration of the defendant.

ASSEMBLYMAN ALLEN: Do you feel that there is any reason the defendant comes before you in one of these narcotic cases, let's assume that he is guilty and he has prior convictions, and he offers to plead guilty to some offense lesser than that charged, or to plead guilty to the offense charged provided the prior is stricken. Is there any advantage to

accepting his plea with some sort of condition such as that in order to save having a trial?

JUDGE SPARLING: That again depends on what you consider advantage. But taking your question as I understand it to be in the first place, if he is charged with possession of narcotics there is no lesser charge. The court has nothing less than that so we eliminate that.

ASSEMBLYMAN ALLEN: In the case of a prior, he could say, "Well, I'll plead guilty to that...

JUDGE SPARLING: I have never had, and I have never known of anyone coming before a court under such a condition as that that they will plead guilty in you strike the prior. I have never had it, so I can just surmise.

But by answering your question there, would it be an advantage, I am inclined to think it would. If we can save a jury trial, and we are so swamped in this county with litigation, if we can save a jury trial, and if we can actually give the defendant all of the treatment in state's prison that he could receive without the prior, and I think we can, substantially so, in fact, practically so, because they don't keep them there ten years on possession in any event, irrespective of the priors. I think that something is gained, and I think the discretion vested in the court is well vested and it is a very sound intelligent legislation that so places it in the court.

ASSEMBLYMAN ALLEN: Do you have any suggestions as to what we could do...the Legislature in order to stamp out the narcotics problem, particularly in this county as was described this morning?

JUDGE SPARLING: Yes, sir. I do. Judge Burke, whom I understand is going to follow me as presiding judge of this superior court, has what I conceive to be a very fine suggestion. He has made it before. This narcotic matter, gentlemen, is nothing new. It has been before every grand jury in the last probably 30 years and before all the courts. We are probably as conversant with the problem and as desirous of doing something about it, and we recommended to grand juries that they do something about it...the Legislature should do something about it.

I would be glad to answer your question, but inasmuch as Judge Burke is prepared on the matter, I would not like to steal his thunder. I didn't write his speech for him, and so I would rather that he have the opportunity of giving it, but I would say this: That I would be happy to have credit for it. I do have some suggestions as does he.

CHAIRMAN CRAWFORD. Thank you very much for appearing here, Judge Sparling.

JUDGE SPARLING: Thank you, gentlemen:

JUDGE BURKE:

LOUIS BURKE
Presiding Judge
Los Angeles County Superior Court

I think when one of the members of the committee asked or made the observation this morning that aren't we involved here with a difference of philosophy in this matter of penology. I think this is well illustrated by the attitude of Judge Charles Fricke recently deceased who was the dean of the criminal court of this county for many, many years, former assistant district attorney, and a man who was regarded by the bar and everyone else as a very strict judge, nevertheless a very just man, but it is commonly said by convicts that they built additional wings on San Quentin to house all the people that Judge Fricke sent there.

Now here is a man that differs entirely in philosophy from the district attorney that you heard this morning. And Judge Fricke first did not believe in the indeterminate law, which became indeterminate sentence law, which became the fundamental approach to penology in this state. He did not hold to it at all. His opinion was that the trial judge, the one who heard the facts, who read the probation report in the event of a plea of guilty, should be the person to determine how long the defendant...the convict should in the penitentiary and only the trial judge. However, when the law was adopted taking it away from the trial judge in the event the person was to be sent to the penitentiary and placing it in the control of the Adult Authority, he believed then that the Adult Authority, as you have heard today and as you well know, could observe the man realizing that rehabilitation, as well as punishment, is a part of the system with emphasis on the later part...that these are the people who can actually determine whether the person was being rehabilitated, his work record in the prison, his attitude and so on, would be reviewed year after year until they finally let him go.

So Judge Fricke took a different attitude as far as priors are concerned, once the Adult Authority was given this power. Judge Sparling succeeded me as the Master Calendar Judge of the Criminal Courts. I was rather amazed one day to see a four-time loser attempting to maneuver in a sense to get out of my department and get into Judge Fricke's department for sentencing. And I wondered why this took place, with Judge Fricke's reputation. Why would this four-time loser want to go before Judge Fricke? And I found that Judge Fricke never sent a man to the penitentiary with a prior once this indeterminate law was passed, except in some very rare instances of where everyone would concede that this is a person on whom the key should be thrown away, that is, that he is a person who has forfeited all right to live at large. But on the rank and file of cases, case after case, after case,

Judge Fricke would strike the priors in the interest of justice in order to allow the Adult Authority greater latitude in the matter of determining the length of term that the defendant should spend in the penitentiary.

When I learned this this changed my own attitude toward priors. Now, like you gentlemen, the impact of this narcotic business hit me full in the face. I had never had any contact with it whatsoever. I had been on the bench a number of years, was assigned to a criminal department. Within the first six months I was overwhelmed with the impact of this narcotic business.

I came up with a lot of solutions. I was going to have a penal colony in my mind established off the coast somewhere and we would put them all there and so on. Fact is, I wrote the Feceral Bureau of Narcotics the Treasury Department. I wrote the Los Angeles agent, I presume it's the man who preceded Mr. Chappell, who spoke this morning, and this gentlemen referred it to San Francisco to his district supervisor. The district supervisor took a slightly different attitude than Mr. Chappell. He said in reply to my letter, inquiring of the federal government, what's the answer to this narcotic problem? This is what I wanted to know as a judge charged with the responsibility of sentencing these addicts?

This gentlemen, the district supervisor said, In a letter of April 4, 1956, addressed to me,"as law enforcement officers we do not consider ourselves to be experts in the sociological, penological and medical aspects of the narcotic addiction problem." He didn't have the answers to this question. And I doubt very much whether Mr. Chappell has. And if Mr. Chappell's answer is to be the answer for the courts, and that is to substitute a mandatory law which removes from the judge all the worry, all the judge needs to do because then he has nothing to worry about on his conscience, is to apply the law to the defendant without any latitude whatsoever and then he can go home and sleep nights. If that's to be the substitution for justice that we now have in this county, in this state, mandatory laws, we would be right back in the predicament we are in right now. Why do you suppose the Supreme Court in People v Burke passed People v Burke, because they encountered cases where the application of the strict rule of the law was entirely inequitable and unconscionable, and they said, we can't do this.

Now the legislature had a mandatory law, and the court said, surely it didn't mean that. That is what the Legislature must've meant. And they reached a long ways, there is no doubt about it in saying that the inherent power of dismissal, the expressed power of dismissal, should apply to priors as well as to other types of offenses.

What's the Federal Government done? Here is Mr.

Chappell who is advocating absolute strict law enforcement, no leeway, as is Mr. Gustafson, no leeway whatsoever. The Federal Government has left itself an out, as he explained. And I rather came to the conclusion he was trying to get off the hook as far as the discretion is still vested in the Federal Judge to go one way or the other, go on the count that is the lesser and charge the man with possession of a narcotic instead of possession of heroin and give him the sentence that carries a two year minimum, or go the other way and go on the five year minimum. So the Federal Government with all its toughness and its toughness applies only, I'm sure, in its application to the cases of real narcotic peddlers. These real narcotic peddlers, we encounter very, very few of them. I'm talking about now the narcotic peddler who is not himself an addict, a person who has no choice, absolutely no choice when he is addicted, as to whether he is going to sell or not. All you have to do is take a look at these people when they bring them in, or go up and look at them in the county jail when they are under the throes of withdrawal and you know that this individual has no alternative. He is going to go out and do anything, because he is an addict, he is a sick person.

The vast majority of the people who come before us for sentencing are people of Mexican origin, Negro origin, and I would say in percentage-wise, perhaps 60, 65%, many of these people have had a very poor chance in life, been discriminated against in many ways, these are the people who as a result of our set-up in society find themselves with marijuana right on the school ground.

Now, a boy 18, 17, 16 starts smoking marijuana on the school ground, are we the ones to condemn him or are going to condemn ourselves for allowing the situation to exist which makes it possible for this individual to get marijuana? Not all these cases are cases of cold-blooded peddlers who never touch the stuff. Take the case of seven boys belonging to a football team..went out to a party to celebrate the victory somewhere out in Van Nuys, somewhere...seven boys on this football team took a shot of heroin and never had any previous narcotic experience. All seven of them became addicts. All seven of them are in state or federal institutions or hospitals. None of these boys had criminal records prior to that event. If you were the judge and you had one of these boys, are you going to place the blame on him or are you going to place the blame on society? Are you going to say to society, we have a responsibility, let's don't look down our noses at these people, what can we do by way of constructive program that will make it impossible for these people to have heroin peddled to them on the school grounds or at a football rally, or at a party? I know that that is your desire.

I am merely citing my own personal examples, my own personal experiences in this field, to tell you that judges are no different than you. You have every desire in the world to answer this problem. We have a man here today, I believe,

Robert Neeb, a lawyer, who has gone all over the country in the study of narcotics from the point of view of how to answer this problem. Lot of us are concerned with it.

During my vacation in 1956, I went to every penitentiary in the state. Met with the Adult Authority, watched and listened to these narcotic cases, asked them what the solution was, talked to the prisoners, talked to the cons themselves, sat down with them, was greatly encouraged by the program that we have in California in the State Hospital, prison hospital at Vacaville, where they do have a program for the treatment of narcotic addicts. Although the program is not any different than the treatment of other people who are addicted, who have based on some psychological weakness, for example, a sex deviate or an alcoholic, these people are treated, generally speaking, in one room, in group counseling and group therapy, and eventually they become better able to understand one another and to cope with their problem.

I have had prisoners say in open court on their second convictions, "Judge, could you send me to Vacaville," because in Vacaville this is where conviction caught up with them while they were in the penitentiary..."because in Vacaville, I was really beginning to find out what makes me tick." Now this is the answer to the treatment of the addict.

I think that we should make a distinction in our laws between the treatment of those who are concerned not with marijuana offenses; I think we should make a distinction with those who are concerned with heroin, I think we should make a distinction in the treatment of those who are addicts; and those who are addicts I think should be treated in an entirely different fashion.

But to get back now for a moment to these statistics that I have mentioned. In my opinion, and of course, it is a self-serving statement having served in the criminal courts, the judges of Los Angeles County are anything but lenient in the handling of narcotic offenses. For example, now these records are records taken by our criminal bureau of the County Clerk's office, they have already been furnished to a committee of the State Legislature, so they are official records.

I am a little bit chagrined at times to hear the chairman of this committee or that committee, the grand jury quoting statistics and then have broadcasters say that, which of these figures are correct? I challenge anyone to dispute these figures. They are given by Harold J. Ostly, the County Clerk to representatives of the Legislature. (EXHIBIT 4) They are as factual as anyone can make them.

These figures for the period of April, 1957, through February 25, 1958, show that 93% of all adults convicted of the sale of heroin where the offender had a previous narcotic violation of any kind, 93% with a prior now were

sentenced to the state penitentiary. So we are talking about 7% of the total cases, thousands of cases. Sure you can find exceptions, you will find several in my file, and I would be happy to discuss those with you individually on the same basis that Judge Sparling answered your questions. Don't just give me the man's record. Go back with me to the office and let's dig out the file and then we will sit down and discuss the case. And you tell me whether your judgment would have been any different than mine.

Let us take...because this first figure is on the sale of heroin which is a different kind of offense, where those figures include the sales of marijuana cigarettes or any type of marijuana. You group all of those figures together, sales of narcotics of any type, with a prior of any type, prior narcotic offense, the overall percentage of that group is 87% being sent to the state penitentiary. Where the sales were of heroin with no prior narcotic record whatever, 67% were sent to the state penitentiary, and the corresponding figure referring to all narcotics sales with no prior is 52%.

Then it goes on down the line. For example, for the possession of heroin with one prior narcotic offense, 74%, 3 out of 4, were sentenced to the state penitentiary. The rest of these figures you are at liberty to see. I will hand them to you and they will be in the record...I won't take time to quote them.

No presiding judge while I was in the criminal court ever told me that there is to be any policy as far as striking priors are concerned. This remains with the individual judge. And judges are the type of persons that they take their responsibilities pretty seriously, and they are not going to share that responsibility with any individual as far as the sentencing of John Doaks now before them is concerned, because they are responsible to their own conscience and to their own oath. It is a grave responsibility and I assure you that they would brook no interference in the discharge of this duty. Each case, as Judge Sparling has told you, rests on its own facts.

Many of the uninitiated, and I certainly was one to the extent that 3 years hasn't given me all the knowledge on this subject, I am still one...are prone to classify everybody in a group, put them in a pigeon hole and say, this is the way they should be treated. For example, last year I was asked to appear before the grand jury and I did. And two members of the grand jury took this position, "Judge, since the Federal record of the cure of those addicted to narcotics in the two Federal Hospitals show that the percentage of success is less than 2%," I think he said, "since that is such a negligible percentage of success, why don't we just disregard it and sentence all of these people to the state penitentiary for long, long terms, and in that way we would stamp out narcotics." Well, the cause of individual rights and liberties would certainly go out the window if that type of philosophy is to be put into effect. And I wouldn't want to sit on the bench with my hands

tied with that type of an approach, legislatively or otherwise.

There is a strong reason why the federal hospitals have not had success in the treatment of narcotic addiction, and this is because almost without exception, the people who are there are there on voluntary commitments. I've sent people there myself. I couldn't commit them, but I've sent them there as a condition of probation. And they regard the hospital as a rest cure. They go in there for two or three months. While at the expense of the federal government, they can reduce their narcotic addiction to a degree of tolerance that is within their financial budget, and they can afford it so they can go out maybe with a fourth of a cap a week, they can live on the outside until this gradually builds up to the point where they want to be committed again, voluntarily. The same situation applied to our local state hospitals.

Authorities have recognized that compulsory treatment is much more effective and it is the only way that it will actually function. To quote an eminent authority, R.S.S. Wilson, former head of the Royal Canadian Mounted Police, statement August 16, 1952. How did I get in touch with this report? This gentleman that I wrote to, the head of the entire area, the Treasury Department Bureau of Narcotics referred me to it. The federal government referred me to this report. It's a United States Government report printed in 1953, in which this gentleman is quoted as an authority. In actual point of fact a drug addict can be cured. It is his unadulterated statement. He pointed out to 150 members of one group alone, who, although previously addicted, are now leading normal lives and have been doing so for a period of from two to 14 years. No, Mr. Wilson is no mollycoddler. He says, "Yet the drug addict even though he be a criminal who deliberately addicted himself, is essentially a psychopath whose addiction is actually due to his underlying mental instability."

Chief Wilson recommended a program for narcotic law enforcement with which I am personally in complete accord. From this point on, I'm speaking merely as an individual and certainly not as a spokesman for the court because the judges of the court have never considered it. But here was this program...to me it made a lot of sense. First, he recommended that drug addicts be committed for a period of not less than 10 years to a government narcotic hospital. The first year to be spent as an in-patient and thereafter, the patient would be eligible for release on parole. The hospital would have to be staffed and the emphasis would be on mental cure, rehabilitation, and training for a use ful occupation on the outside.

Second, while on parole a job would be provided the parolee. He would be required to stay with his employment under a very strict parole which would require him to report regularly to the parole officer. He would not be permitted to associate with members of the criminal classes or visit persons or places where there was any possibility of narcotic contamination. He would not be permitted to change his employment or place of abode without prior approval. He would be required to undergo periodic medical rechecks in the outpatient

clinic or by a doctor who would be charged with supervising him from this point of view. Any violations of the terms of the parole would result in a recommital.

Third...a recommitment on two occasions would cause the patient to be classified as incurable and sent for life to a special institution reserved for such cases. There he would once more be physically cured and given an opportunity to follow a useful avocation, but permanently within the confines of the institution. (EXHIBIT 3).

To my mind, this is a program that would work in this state. At one time, we had a hospital at Spadra at the time when narcotics gradually dropped off in this state, we had a hospital which we could commit them. Now, all we have is this one institution at Vacaville Medical Facility which is a part of the state prison system. This is in effect what they are doing at this Vacaville institution. The only unfortunate part of it is that they have two outpatient clinics. One is in Los Angeles which is, as you all know the worst place in the state from the point of view of narcotics. One, I believe, is in San Francisco. So, to report to this outpatient clinic these people actually have to come right back to their old environment. I think that this is a mistake. I believe in this state that if we would segregate the addict from the commercial peddler, reserve the worst for the peddler, send the addict, if he is an addict it doesn't matter whether he's committed a crime or not, perhaps we ought to try him like we do the sexual psychopath. Let's cure him of being an addict first and when he is cured of being an addict, let's bring him back to court and sentence him for his criminal offense.

But, at any rate, the addict is a person who can't help himself. He cannot help himself in a free environment. And he will tell you that himself. He will tell you, ..."As soon as I get out I'm going back on it."

The father of one of these boys who was on this football team who has been in no less than three or four institutions...this boy was given a year in the county jail... he came back and looked fine...he worked on a county farm and he regained his health, strength and just looked great. His parents were delighted with him..they thought Johnny is on his way. The day he was to be released, the parents didn't know it, but they got a phone call from a man who said, "Is Blacky home?" They said, "No, our son isn't home, he isn't due to be released." He said, "Oh no, he's coming out today." The boy came home and well along about evening he said, "Dad, I'm going out to take a walk." His Dad said, "Well, okay." But still worrying about the kid he followed him out. The boy walked two blocks. A car pulled up along side of him, the boy stepped in the car. The father couldn't stop him. He returned at four a.m., and he had had his first load of heroin.

The error in that approach, it seems to me is, that he was permitted to return to an old environment where old friends could approach him. He wasn't ready to come out. If that person had been in a hospital at Vacaville, we will say, had been paroled to a job on a farm somewhere or somewhere far removed from the ordinary traffic of narcotics, under a strict parole officer where he couldn't leave his place of employment without violating his parole, reporting to the local doctor who could administer the nalline test any time that he felt the boy was taking narcotics. If he was taking narcotics, then send him back, recomit him. This parole would continue for a period of ten years. If he violates it, send him back. If he violates it twice then put him in an institution for the rest of his life and let him, within the institution do something worthwhile with his hands because to keep it away from him, he can still live a worthwhile life.

To my mind, if we would segregate these classes of people and not either in our statistics of any other way try to put them all in one pot and say, "This man has a narcotic prior." What type of prior are you talking about? This is the thing that disturbs the judge, because he sees the individual. Let me give you one case and then I'll quit.

Here is a boy who at the age 21 was walking down the street, a boy alongside of him is smoking a marijuana cigarette. The other boy asks him, "What in the world are you smoking, it smells like old grass or something." "Haven't you ever smoked marijuana?" "No,"so he said, "here, this cost me 50¢...got another just like it, you give me the four bits and you can have it" The kid gives him the four-bits. Three felonys have been committed. One, sale of narcotics, and two, possession of narcotics..the boy is picked up with this half smoked roach in his possession...he has a narcotic prior now. These gentlemen who spoke this morning, they are going to throw the key away, this is a boy with a narcotic prior, with a narcotic possession charge. What happens to him? He is given probation, he is given three months in the county jail, and he goes to work for Lockheed or some aircraft factory, gets married, has a child, has a good record, makes good on probation, no problem involved. Three years later, he is at a drive-in, one of these local drive-in's which is a narcotic hot-spot. Some of his old pals are sitting in a car and they say hello to him and invite him and he gets into the car and he is sitting down with them and they start passing around marijuana cigarettes. He smokes it along with the others. The place is under observation. The whole group are arrested and he is picked up. Now this boy had a child, he has a wife, he has a good record, but he has a narcotic prior and I'm the judge.

Well, what would you do? What would you do? Would you throw the key away or would you try to look at this individual and feel some sense of responsibility for a condition that permits narcotics to exist within the community. And would you say to yourself, now this boy has done a pretty good job, he's got a job, he's stayed out of trouble, he's got a child, he's

he's got a wife. If I put this boy up, and at that time it was a minimum of five years, but you gentlemen changed that because this law was too strict. It was a law, it permitted no equity. So you changed that to two years, indicating a change of heart about these mandatory sentences, and gave me the opportunity if I did want to stick this boy with this prior to send him at least for a minimum of two years. But at that time it was five years. Now what would you do?

I made no finding on the prior because until I made a finding on the prior this boy was still eligible for probation. You have to find the prior to be true to deny him probation, as I see the law. So I made no finding on the prior. I gave him one year in the county jail. And I thought it was a very strict sentence. But one, he went out to the honor farm, the honor farm was recommended, his wife and child could still visit him, maybe he could make it.

Now, that's the point of view of a judge with an individual case. But if you take the gentlemen who says, the end justifies the means. That has never been the law of this country. The end justifies the means. That I, as a judge, am going to say send that boy to the penitentiary so that we can stamp out narcotics. We still have to do justice at the bench level. And that is what the judges try to do. And that is all I have to say, gentlemen. I will be glad to answer any questions.

CHAIRMAN CRAWFORD: Judge, there has been much reference today saying that this problem is society's fault. Don't you feel that a large percentage of society is not to blame for this particular problem? Aren't there many individuals who perhaps will become addicted to this habit because of these individuals being turned loose again to engage... I believe the statistics show that every addict infects six other individuals with this disease. Don't you feel that these innocent people in society deserve some protection also?

JUDGE BURKE: Yes. I do. I think you are right. I think the courts and the Legislature have to take into consideration the full picture.

CHAIRMAN CRAWFORD: You make one statement where you said you would reserve the worst for the commercial seller. What did you mean by that phrase?

JUDGE BURKE: I mean the non-addict. Because the person who is addicted beyond his financial means to pay, this person is the person whom we send up as sellers of narcotics. And I would venture to say in 8 out of 10 cases...they are the persons who when the officer comes to them and the officer is pale and unshaven and he is holding his stomach and he is in cramps, and he says, "Look, do you know where I can get a shot?" and this fellow who has been there and knows exactly what this kind of pain is, says, "Well, okay, I can." This is the way pinches are made in many, many cases. And so he takes him out of his spirit of compassion and perhaps one other thought in mind, that when he makes this buy for this police officer that he will out of the five caps, will get

to keep one so that he can support his habit. And so he goes along with it. Now, this is a typical case. Case after case, after case...I think you have to distinguish between those two sellers.

The man that Mr. Chappell is trying to get in Italy, and in Mexico, the man who never gets near this traffic, who is not an addict, this is the person who should go to the penitentiary.

One of the most flagrant cases is an ex-flyer, for example...Man with a fine family...Never in any trouble...Out of the air corps as a pilot...Couldn't get a civilian job as a flyer because he flew a jet in Korea or something, so to make a living he starts chartering flights between here and Mexico and he flys fishermen to La Pas and so on. One day he brings back a load of marijuana, packaged. Of course, he can use his good sense and know what's in it. But this is how this fellow got into the racket. And then he started transporting it, no doubt, in larger quantities. Now this fellow is not addicted. He's free and 21. He knows what he is doing. When he came up there just wasn't any question about his sentencing regardless of how many letters of recommendation he had from everybody that he had ever had any contact with, who thought he was a fine person, fine family. He went to the penitentiary because he wasn't an addict, and he was making money out of the commerical sale of narcotics.

CHAIRMAN CRAWFORD: One other point, Judge, in looking over these various cases from your court, I noticed that as distinguished from the other judges that your statement usually is, "The courts will take no action on the prior in order to allow the state Adult Authority greater latitude in fixing of sentence." I find that in your particular cases you very seldom reduce it to a county jail sentence, which has been prevalant in some other courts. This bears out what your testimony is that you prefer to leave it to the Adult Authority, rather than reducing it to merely a county jail sentence.

JUDGE BURKE: I might just explain that psychologically, it seemed to me if I followed Judge Fricke's process of striking the prior, I might be indicating to the Adult Authority that I felt that since this prior had been paid for by the man in a sense that he served a term in the penitentiary, or whatever he served, that the Adult Authority shouldn't take it into consideration. So instead of striking it or saying that I find it is not true which goes against the grain because you know it is true...The man may have even said,"Yes, I committed the crime." In order to avoid each of those two evils, I would simply say, "I make no finding on the prior in order to allow the Adult Authority greater latitude in the matter of determining his term sentence."

CHAIRMAN CRAWFORD: Do you have any questions, Mr. Allen?

ASSEMBLYMAN BRUCE ALLEN: Judge, on any given case do you see when the defendant offers to plead guilty to some lesser charge or substance that you will disregard the prior? Is there any advantage to the court system taking its plea in order to save the delay and expense of a trial?

JUDGE BURKE: I see none. I think that anyone who has operated around a floor of the Hall of Justice knows that you don't go to a judge and say to him, "If you strike prior, I'll plead guilty." There just aren't, to my knowledge, any "deals" being made. The judge will say, "Now look, if you want to plead guilty to the charge, you go ahead. Whether or not I strike the prior is a matter that I will consider at the time of sentence." So I see no justification in exchange for a plea, to bargain for a plea, in other words, on the basis of striking the prior.

ASSEMBLYMAN ALLEN: What I am trying to find out is whether this situation that has been the subject of our inquiry here today, is in any way related to a situation of congestion in the court system?

JUDGE BURKE: No, it is not.

CHAIRMAN CRAWFORD: Thank you very much for appearing here again today, Judge Burke.

JUDGE BURKE: Thank you, Mr. Crawford, and gentlemen, very much.

CHAIRMAN CRAWFORD: We will take a five minute recess at this time.

RECESS. . . .

CHAIRMAN CRAWFORD: The meeting will come to order. Is Justice Fourt present? Mr. Roelle. Will you please identify yourself for the record, Mr. Roelle.

MR. ROELLE:

ROGER ROELLE
Chairman of the Narcotics Committee
Los Angeles County Grand Jury

CHAIRMAN CRAWFORD: Do you have a prepared statement for us?

MR. ROELLE: Yes, sir, I have, but I won't stick to it.

CHAIRMAN CRAWFORD: You just go ahead.

MR. ROELLE: The 1956 Grand Jury recognizing the growing narcotic problem in this county established for the first time a standing committee on narcotics. The jury did this after hearing evidence that 70% of the crimein this state could be attributed to the sale and use of narcotics, and the use of narcotics is growing at a rate of 18% faster than the growth of population. In the formation of the 1958 Grand Jury, I was appointed Chairman of the Narcotic Committee by Foreman, Paul Bryan. The Narcotic Committee at once began a problem in the handling of narcotic cases in Los Angeles County.

Between the past four months the committee has accumulated a great many facts and every aspect of the narcotic problem here. Our findings make it obvious that the narcotic traffic is not being controlled; it is equally apparent that the recent attempts of the state legislature to strengthen the laws which prohibit sale and use of narcotics has thus far met with failure.

A review of narcotic cases which have been tried by the Superior Courts of this County show that the responsibility for this failure must be placed on the judges of these courts. The Legislature has clearly spelled out the penalty for the violation of narcotic laws. It has widely provided mandatory minimum sentences for narcotic offenders. The very purpose of this legislation is to eliminate the narcotic problem in this state. It is the judges' ethical, moral, and legal duty to impose a sentence as demanded by the Legislature. Sentences now being imposed in the Los Angeles County indicate that the Superior Courts have willingly disregarded the mandate of the Legislature. In fact, a review of cases supplied by the district attorney's office shows the Superior Court Judges have continually handed down sentences which are contrary to the intent of the legislature.

At this point I would like to talk about the county jail sentences. There has been a lot of talk this morning about rehabilitation, and the cases that are sent to the state prison and Adult Authority. I am talking about a lot of cases, better than 50% of narcotic offenders going to state, going to the county jail, not to the Adult Authority, not to the state prisons.

All of the references made by the judges this morning kept going back to the Adult Authority. There is no Adult Authority, there is no rehabilitation program in the county jail, as you all know. I would also like to point out to the judges, evidently they don't seem to know this, that these $10.00 buys, that they are talking about, $5.00 buys, and $20.00 buys, as you all know, are made by the police department. And this is a matter of money, the matter of finances, as to how much money these fellows can spend, to prove that these fellows are sellers and pushers of narcotics. It isn't a matter of how much they buy. It is a matter of how much money they have to prove a point.

I talked to all of these officers. I went out on the raid with them. I picked up these fellows; I've talked to them. It isn't a matter of a ten-dollar bill. If they want to spend a hundred dollars of our money, the county's money, the could spend it to buy narcotics and keep this thing rolling. They are only there to prove a point. They are only there to prove that this man is a seller of narcotics. This they have done. They have done their jobs. I don't think that they have to spend a thousand dollars of our money or five hundred dollars of our money to prove that this guy has sold narcotics not once, but 10 or 15 times, or 20 times. It's like going through a traffic light, you don't get caught all the time. You only get caught once in a while and you pay the penalty.

I have submitted cases and records to this committee which illustrate the methods used by these judges to circumvent the law. The law says, for example, in the case the defendant has furnished the marked narcotic to a minor, this is a big thing in this state, especially in this county. Less than 24% of those selling to minors are being sent to prison. And I can show it by the records. I furnished you fellows with the records given to me by the district attorney's office. This 93% figure..I don't know where it came from. It certainly didn't come from our courts. Because I have showed you and I have given you the cases and I have them here if anybody cares to look at them, and it shows the amount of cases and the amount with priors and how many have actually gone to state prison.

For instance, 325 cases, cases with prior is 174, state prison 47. This is a heck of a ways of being 93%. And this is July 1, 1957, to December 31, 1957. Now, I have these copies from the district attorney's office going back to 1955. There is no 93% in any case, in any instance, there is no 93% in any case, in any instance, there is no 74%. This one book I gave you like this, you can count the cases and count where they went in case of minors, and I think it will run closer to 16% that went to state prison. I don't like to argue with the judge. It only leads to trouble. But, the figures are not working out here. I haven't seen any substantiated figures or court cases which would show me 93%. I have only seen the district attorney's figures which I have to rely on because he backed it up with case numbers and cases.

I would like to point out a case here that was in reference to a minor. The law says, for example, a case where a defendant has furnished a minor,the penalty should be five years to life imprisonment and in no case shall probation or suspension of sentence be allowed. And I am going to name cases today because I think it is about time we pointed to the people and the cases where...let's not talk in generalities any more.

In the case of People v Mickey Stutzman and Charles Effridge, the defendants were charged with furnishing narcotics to minors and with three counts of rape involving two juveniles,

age 15 and 14. Stutzman had been previously arrested for burglary, battery and rape. Judge Beach Vasey said in his findings, "If I were to find you guilty of furnishing narcotics to this minor, I would have to send you the state prison from five years to life." Instead of being sent to the state prison, the defendant was held to answer on the rape count and the charge of furnishing narcotics to a minor was dismissed by order of the court. Each defendant received 15 days in the county jail... Fifteen days for statutory rape.

Now, I read this case from top to bottom. I read everything in it...I got the facts...there was nothing in this case that could give a judge, except a couple of letters from his own personal friends that said he was a nice guy and was running with the wrong crowd...this case just illustrates how criminal court judges circumvent the law by changing a plea and reducing the charge so that a lesser penalty can be given.

You read some of these other cases People v Billet, defendant, was held on three counts of selling narcotics, one with a prior narcotic conviction alleged...according to the state law conviction under these circumstances require a sentence of 2 to 20 years imprisonment on each count. Judge Morris Sparling found the defendant guilty on one count. The other two were dismissed. At the time of sentence Judge Sparling said, "It is the judgment and sentence of this court that considering the 207 days or thereabouts the defendant has spent in the county jail, the court is now going to sentence the defendant to one year in the county jail." The court made no findings on the prior. Now, the reason they didn't make any findings on the prior is they reduced it to a misdeameanor and put him in the county jail...No adult authority in these things....The defendant has a record of violation of the law from 1950 through 1957, including a prior conviction for possession of narcotics in 1951, six months' county jail sentence for possession of narcotics in 1953 and vagrancy, theft, burglary and escape.

In the case People v Arthur Terain, the defendant had 13 prior narcotic arrests and two convictions. He was charged with suspicion of burglary and sale of heroin. Judge Louis Burke found the defendant guilty of burglary in the second degree and dismissed the narcotic sale in what he terms the interest of justice. Had the defendant been found guilty on a charge of selling heroin to which he had previously plead guilty, the law would have required him to sentence him to 2 to 20 years in a state prision.

In People v Martin Booker, the defendant was charged jointly with selling narcotics. Narcotic prior was alleged against Martin...Minute order of September 23rd indicate that Judge Barnes found both defendants guilty as charged and found the prior to be true. Minute order of October 18, 1957, indicates that Judge Fildew suspended the proceedings against each defendant and placed each defendant on probation for one year on condition that they spend the first year in the county jail. Had the judge's findings been carried out, Martin would have

gone to the state prison from 2 to 20 years.

One of the primary objectives of the Legislature, I believe, was to increase the penalty for sale of narcotics to minors. The law provides for mandatory sentence of from 5 years to life imprisonment for selling narcotics to minors. Here is how Judge Burton Noble interprets the intent of the law maker. I would like to read some of his cases and the way the charges have been reduced. Count one, information charged defendant giving narcotics to a minor. Count two, charged defendant with giving narcotics to a minor. The court says, and he says this many times in his cases,"I wouldn't have any question about anyone who sells narcotics to a minor. I don't have any regard for anyone who sells narcotics in the first place, and particularly, if they sell to a minor." But I recall this minor, although she was only fifteen, she was much more mature than her age. And then the proceedings were suspended, the defendant was placed on probation for a period of five years under the following condition : That he spend the first year in the county jail.

In the case of People v Grant, defendant was charged with giving marijuana to a minor...count two, charges of giving marijuana to the same minor and the Judge,"I have no question... This fellow had a previous count on him in Orange County. This is the second time he was involved in narcotics. The court says, "I have no question at all about this man,...sold narcotics to this boy, but there are circumstances that would make the ten-year minimum prison sentence pretty severe where the circumstances are involved as they are here" He said, "I think the Legislature has wisely provided a ten-year minimum sentence, or five-year minimum sentence in selling a minor any narcotics, ten years where there is a prior." He said, "I am going to reduce this to a possession case in order that I do not have to give the mandatory sentence of five years in prison."

Now, I don't know how you feel, but his minorthing to me...it strikes pretty close to home. I have six good reasons age 8 to 18.

Now, here's another one, two counts..sale of furnishing to a minor. The defendant plead guilty. Proceeding suspended, probation five years, spent the first year in the county jail. Here's another one, People v Davis. Count of information: Charged the defendant with furnishing marijuana to a minor, count two, charge of furnishing marijuana to the same minor, count three, charge of furnishing marijuana to the same minor. The judge says the same story, "I don't take to anyone who would sell to a minor, but there are extenuating circumstances." And he says here, "The lad who obviously may have appeared older and certainly was older in experience...in view of the fact that the minimum sentence in the state prison is five years for a charge of this kind, I am going to make a misdemeanor out of it and do something which I hope I will not regret...place this defendant on probation and proceeding will be suspended in this matter, the defendant will be placed on probation for five years,

under the condition he spend his first year of probation in the county jail." And there were other counts he said, "There are two other counts...they may be dismissed in the interest of justice." Judge Burke and Sparling had explained their lenient handling of narcotic cases in this way. You heard them today say..lowering the sentence of status, they didn't mention misdemeanor but that's what they are doing, lowering the status to misdemeanor by striking priors and reducing charges in order to give the State Adult Authority more opportunity to rehabilitate the prisoner. This is an incredible explanation since most of the cases handled by these judges, as these records will show, are going to the county jail and never come to the attention of the State Adult Authority. There is no rehabilitation program in the county jail.

A case in point that I might point out to you is the People v Mickey Wallace. The defendant testified under oath before a U. S. Senate investigating committee that he had served four sentences for selling narcotics, ranging from 6 months to a year in the county jail under this Sparling-Burke county jail rehabilitation program. By her own admission she had while out on bail sold heroin to over 400 individuals in order to secure her bail bond and attorney fee.

Another case is the People v Roble, the defendant was charged with the possession of heroin with two prior convictions alleged, the defendant plead guilty denying the prior. The minute order of February 3, 1958, reads as follows: "Whereas the said defendant having duly plead guilty, no findings having been made to the prior conviction is therefore ordered that said defendant be punished by imprisonment in a county jail for the term of six months which sentence ordered to run concurrently with the sentence now being served. This case was heard before Judge Sparling. It should be remembered that at the time Sparling passed sentence, no finding was made to the prior conviction, in spite of the fact that the Judge must have known the guy was in jail.

The County Jail Rehabilitation Program of Burke and Sparling presented another interesting phase in this particular case. On or about March 4, 1958, this defendant, Roble, who was then serving his concurrent sentence in the county jail was apprehended by Sheriff Deputy Kenneth Hayes with two grams of heroin in his possession. He was selling it to his fellow prisoners.

I have many cases here. I just hit them lightly. People v Musgrove, narcotic prior, order states no finding on prior, 60 days, county jail...Judge Sparling. People v Digg narcotic prior, sentenced to state prison, sentence suspended, defendant spent 6 months in the county jail...Judge Sparling. People v Sanchez, narcotic prior, prior stricken, 45 days in county jail...Judge Sparling. These are all recent cases. People v White, narcotic prior, no finding on prior, 120 days in county jail...Judge Sparling. Narcotic prior sentenced to

San Quentin, sentence suspended.

Now, these guys must have been guilty enough to go to prison or he wouldn't have sent them to the state prison in the first place...and he gives them six months in the county jail. People v Alamata, narcotic prior, prior stricken in the interest of justice, six months county jail...Judge Burke. People v Sharp, narcotic prior, court strikes prior in the interest of justice, one year in the county jail. People v Lundstrom, narcotic prior, court struck prior, one year county jail. People v Herrera, narcotic prior, no action on prior, one year in county jail. People v Leech, narcotic prior, no action on prior, 6 months county jail.

In spite of the opinion of our Legislature, in spite of the tough laws we have enacted to give judges sufficient ammunition to curb the narcotic traffic, in spite of the fact that users of narcotics are increasing 18% faster than the gross rate of population itself, in the face of such demanding pressure, why do these judges use every device at their disposal to free the narcotic offender. Why do they twist the meaning and intent of the law to benefit the law violators, why do they punish society by releasing narcotic criminals to prey upon the youth of this country.

In this statement I referred to, a few specific cases, these are typical of hundreds of narcotic cases that are handled by our criminal courts in the past three years. It is obvious that the courts have not assumed their rightful responsibility of protecting society against the narcotic criminal. Rather they have bent over backwards to coddle these defenders. They have reduced the statute of our felony court who are merely misdemeanor courts and in doing so have given only slot-machine justice. A gamble with most of the odds in favor of the criminal. A judicial practice is a major contributing factor to the continuing growth of narcotic traffic in Los Angeles County.

I understand, and of course, it was brought here this morning, that there is favorable consideration now given by the Committees of the Legislature to a measure which would force judges to abide by the mandate of the Legislature. I believe that action of this kind is necessary. In addition, I believe the state should adopt a narcotic policy calling for even more stringent penalties than we now have on the books. Similar to the policies and law now proving so effective in the state of Ohio.

For example, one section of the Ohio law provides that for the dispensing of narcotics to minors, the penalty is not less than 30 years with a maximum of life imprisonment. Probation is forbidden when one induces another to use narcotics, administers or induces minors to use narcotics or to possess drugs for sale.

I believe the chief reason for penal laws is for

the protection of society. Punishment and rehabilitation of offenders must be considered in relation to the health and safety of the community. Our judges must realize our primary duty is to society as a whole. The judge is not a law maker. His duty is to administer justice within the frame work and intent of the laws of the Legislature. Only when our judges assume their rightful responsibility in the administration of strong laws will society be protected from the narcotic criminal.

I would like to point out that without the corner, or street corner pusher, or seller, that we have been referring to here today, that are addicts, the syndicate could not exist. Chappell wouldn't have a job because without a market, these people would have to eat these narcotics. I'm for them eating them. There would be no place for them to sell it if we could put the guy out of business on the street corner. The only way that you are going to put them out of business is to make the overhead so high that he can't afford to stay in business. By the overhead...most criminals, you'll talk to criminals, I have talked to a lot of them, they figure their jail sentence is part of their overhead. "How much time am I going to have to spend in relation to how much money I am going to make?" And when it is only a six months' sentence, or a one year sentence, or even two years, they are going to stay in business. There is a lot of money in narcotics. It is the most lucrative business there is today. These hoodlums and gangsters have moved in from gambling and bootlegging into narcotics. The only way you are going to put them out of business is to make the overhead so high they can't afford to stay in business...30 - 40 year penalties and I'll guarantee you this guy that is using this stuff will find something else to use besides narcotics, because he isn't going to touch it with a ten-foot pole.

I have been out in the school yard...they have reached down into the school level, they got the kids selling the stuff. Out in Azusa, there are 80 kids handling narcotics ...a little town like Covena, 20...Baldwin Park, 25. All of these little towns are being...it's just moving in.

I heard a statement today, marijuana should be separated. The Price Daniel report shows different. The Price Daniel, U. S. Senate Investigating Committee made a thorough going over the entire United States, and they came up and tied marijuana right in with heroin mainly because this is a threat to youth of the country, this is the introduction. Now, I'd say it to anybody that what we need is strong, tough, mandatory sentences. I have heard these judges sit here today and excuse the practice striking priors and say how soft they are going to be on them because they are sick people. I haven't heard one of them say, "I'm going to get tough, I'm going to stomp out narcotics, I'm going to crack down" I haven't heard any judge here yet today say, "I'm going to do my best to stomp out this criminal. I'm going to get tough" And so these people on the street hear

these judges say, "We're going to crack down," instead of saying, "We are going to do everything we can around the law to give you a break." We are not going to ship this thing. We are going to have to whip it together.

I have heard the Criminal Bar Association back the judges...fine, they have a job to do, they protect these people, it's their job, they have to appear before these judges, and they have to expect...try to get their prisoner off the best way they can, they are defendants, so naturally they will back them up. I imagine if you talk to the bail bondsmen, they'll also back them up. Because in the case of Mickey Wallace, they made bail four times, $7500.00 was the bail, and she sold heroin to pay it off. Until everybody in the state does like they did in Ohio and the other states, and comes out and says, "We are going to crack down, we are going to get tough," we are not going to whip this. Now, I'll be glad to answer any questions the committee would like to ask.

CHAIRMAN CRAWFORD: Mr. Roelle, you have heard testimony here today concerning how certain judges have interpreted the Legislative intent of Sections 1385 and 1386. Have you had an opportunity to look at these sections?

MR. ROELLE: Yes, sir. I have read every section I could possibly on this.

CHAIRMAN CRAWFORD: I'm interested in getting an informed layman's opinion as to what we actually intended when we passed these sections in Sacramento.

MR. ROELLE: As you know the practice of an attorney to twist the law to benefit the defendant. And I believe, if the judges want, they can twist the law to benefit the offender, which they are doing in my opinion. And no matter what you do with these laws, as long as you have judges who want to twist it in favor of the criminal which they are doing..which it shows, that an appellate court decision came down...these late ones that are coming down...they are doing everything they can to take it easy on the criminal. The heck with society. These judges could just as well have taken Section 1385 or any other section and twisted it the other way. I don't know why they don't.

CHAIRMAN CRAWFORD: Do you think it was our legislative intent to make it more severe on the second offender?

MR. ROELLE: I certainly took it that way. It was clearly spelled out to me, in the cases of second offenses that the penalty would become greater.

CHAIRMAN CRAWFORD: Thank you. I was under that impression also when we voted on the bills in committee and on the floor. Mr. Allen, do you have any questions?

ASSEMBLYMAN ALLEN: No, thank you.

CHAIRMAN CRAWFORD: Thank you very much for appearing here, Mr. Roelle. We appreciate it.

Is Justice Fourt present? Mr. Neeb? Will you identify yourself for the record, please?

MR. NEEB:

ROBERT NEEB
Attorney at Law
Beverly Hills, California

For the benefit of the committee in view of the fact that I want to draw some conclusions that may be of some help to you or to the Legislature, it might be to some advantage to you to know first a little of my background and why I come to these conclusions on this very subject.

CHAIRMAN CRAWFORD: Before we go into that are you not a member of the Attorney General's Advisory Committee?

MR. NEEB: Yes, And I was two years Chairman of the Southern Division of that Committee which spent two years taking testimony concerning the narcotic problem with experts from all over the United States and England appearing before us.

CHAIRMAN CRAWFORD: Thank you.

MR. NEEB: That particular committee after two years of work went on to other subjects. But I continued my interest in the subject of narcotics and in 1956, testified before the Senate Judiciary committee in Washington on this subject and at that time had given to me the files and records of the findings of the Judiciary Committee and the Price Daniels Committee, and I might say, gentlemen, this may be in the minds of some of the people here. I find today that my thoughts on narcotics at that stage with that experience behind me was largely wrong. And I'll tell you why I was wrong.

In 1957, which will be a year ago this month, I was invited to sit with the International Commission on Narcotics at the U. N. in New York. I spent considerable time there and had a chance to meet the delegates to the Commission from all over the world. And also had arranged a number of conferences with members of the staff of the Division of Narcotics of the UN from Geneva, Switzerland.

And after that experience, I realized I didn't know anything about the subject of narcotics. And I realized something else and I think this is the thing I would like to bring to this committee's attention if I do nothing else. You will never solve the narcotic problem on a county level. And you will never solve it on a state level. This problem is a gigantic international business. I did not realize until I went to the UN but there are a number of countries some of which

profess to be friendly with the United States...a part of whose economy is actually based on the production and the sale of opium. Some of those countries to which we send aid are in that business. And until the Federal Government, either by urging by you gentlemen on this Committee or by the Legislature as a whole does some certain things on a federal level, you are not going to lick the narcotic problem. And you certainly will not lick it by criticizing enforcement officers, judges, juries or anyone else. Because I can say this and I know it's true, if you arrested every addict in California and you picked up every known peddl r and put them in jail within a few months you would have just as many addicts and just as many peddlers as you have now. And the reason is this: You have an unlimited supply of high grade heroin in this area and the supply comes only a short distance. It comes from Tiajuana and the Mexican area.

I heard about this. And you say, "How do I know this? Have I read it?" I did. But I did something else too which maybe was foolish because I might have gotten shot doing it. But I went down to Mexico and I spend some time with Mexican friends who don't like this any more than you do. And I have been in every dive in Tiajuana and I've seen heroin and I've seen marijuana and I could make a buy if I wanted to. I met some peddlers. I know the names of the gang that run it down there. I've been asked to state the names on television and radio, and I can't do it because my informers would probably be shot.

This is big time operation down there. This makes the Caponi gang be very insignificant by comparison. They have had 25 murders in the last 18 months in Tiajuana. None of which were solved. The police department there in this neighboring city of ours is run by the gang. The Governor head it. His wife collects the money from the houses of prostitution. And every place I sent I saw sons of people from California, 20 years, nineteen, eighteen, seventeen. They are the customers of Mexico and they learn to take the narcotics down there and when they come back here they become customers to the local peddlers.

You want to take a trip around Tiajuana as I did, around dawn any morning on a weekend, you'll find young people that go to high school in Los Angeles laying in the alleys, sick, rolled, drugged, drunk. You can stand out on the border as I did in the mornings and see them come over and you'd get sick at what you saw. And yet the cars roll over and nothing is done about it.

I spent some time with the border patrol. They are hard riding, hard shooting officers. And they get their man. But they can't stem the tide. You have to do something more about it and you can't do it on a county level.

I have some proposals to make. But before I make them I want to say a little bit about the present problem of

striking priors. I spent more than 20 years in practice in this community much of it in the criminal courts. I happen to be a trial lawyer. That's about all I do. And I have watched the judges come and go. I knew Judge Fricke, he was one of my oldest friends. And I know what Judge Louis Burke says of him is true. He didn't believe in this business of being tied down so you couldn't do the thing that a view of the whole case directed you to do. Now, Roelle says that lawyers are for twisting the law. Well, I want for the record to say that in 20 years of practice, I never twisted any law....I simply acted as an officer of the court and did the best I could. And I know the judges are not twisting anything either. But I can say this to you, gentlemen, that if the Legislature in this State should pass a law making it mandatory for judges to leave priors in the record thereby causing serious long term sentences regardless of the circumstances, you would be doing a very great disservice to the people of this State.

On these suggestions...I'm only going to make five. You may say, "What can we as legislators do about these?" Because I am not recommending that you change any present laws. But I'm suggesting that you as leaders in this field, you are giving your time to this, and you are doing a good job, try to raise your sights and look beyond the horizon of a city, or county, or state, and realize you are dealing with one of the biggest businesses in the world. And here is a very little known fact. Most people think that the narcotic problem in California and this country has been here for many, many years. It hasn't, Actually, the records in Washington show that as recent as 1948...that's only 10 years ago, they were laying off narcotic agents. Addiction in this country had fallen to the point where they had closed up the big facility at Fort Worth, Texas, and Congress was about to close up the big hospital at Lexington, Kentucky.

And then something happened. And this is the thing you should keep your eyes on, your sights on. What happened in 1948, or thereabouts was there began to be a flood of high grade heroin coming into this country. And I suggest, gentlemen, that it was no coincidence that that turn of events occurred at just the same time that the communists completed the consolidation of the Orient, and that flood has continued to rise constantly since then. And we are not the only place in the country that has a serious narcotic problem. They have it in the East. They don't have marijuana, they never see it there. I think they had 300 addicts testify before the Daniels Committee and none of them had ever used marijuana. They all began on heroin. Because they don't get it back there.

But the suggestions that I make gentlemen would be these. One, and you can do something about it as legislators.. you are the leaders of this state...you are the leaders of the most important state in these United States...and if you don't think the Senators in Washington respect California, you are

mistaken. And they know a great deal about the narcotic problem out here, as I talked to almost all of them. One, I suggested, and I have suggested it before, and this is something that you could do by memorializing Congress from the Assembly and the Senate of this State to do this...close the Mexican border to all travel except by passport and visa. You would not interfere with business and you would stop the indiscrimate running back and forth of juveniles, ex-convicts, and peddlers. In 1956, there were 65 million crossings of that border by automobile and foot travel. These are in the findings of the Daniels Committee.

Secondly, I would suggest, and this is something that you could work on, that we have a Uniform Narcotic Control Act to be drawn and adopted in all states so that the peddlers cannot seek one state where the laws at the moment happen to be to their liking.

Third, and this is something you certainly could work on, that we advocate in the Congress that they change the federal rule about state narcotic agents. Your Department of Justice under the Attorney General's office has a fine agency, but they have no authority to go down to the harbor and search a boat or baggage or a person. We found in the Attorney General's Committee after two years of study that the Federal Customs Officers go out to International Airport to search planes. Yes..how often? They search one plane, once a month.

Bringing narcotics into California is child's play. There were times in San Francisco by actual records when boats were coming in from the Orient and there were known smugglers aboard and they couldn't find more than 3 Federal Customs Officers to do the searching. The result is, your state officers that you pay and your federal officers have to stand virtually on the docks and wait until the narcotics get into California and then run around and look for it.

I made this proposal to the Senate Judiciary Committee and immediately Senator Langner asked the Department to come forward and state if they had such power. Present in the hearing room was Mr. Cunningham, the assistant to Harry Anslinger. He said, "Yes, I can search anything." Well, after some questioning it was found out that he had an old customs badge that he had for 25 years but he was the only federal officer in the country that had one. The Senate of the United States decided they would change the law. But it got bogged down because customs didn't want to give up any of their rights. Now, there is something you can do about as legislators in this state.

Also, there are pending, and I was interested in hearing the report that Judge Louis Burke gave about the plan of rehabilitation. Most officers take the position... they may have said to you, that you might as well throw the key away on addicts because they are incurable. It's true.

The record at Lexington, Kentucky shows 95% or 98% failure. But there are three important bills now in the Senate of the United States and you as legislators in this State could do a lot about getting them out and up for hearing. They provide a new departure and I won't give you the details. They are Senate Bills 980, 981 and 982. They are in the Labor and Public Welfare Committee, Senator Lister Hill of Alabama, Chairman. They provide that your Superior Court Judges could sentence a man to a Federal Narcotics Hospital under the Federal Public Health Service directly and the man would have to stay there because he would be committed. As the judges have indicated, you can't do any good on self-commitments.

Then it provides also, these bills, that there would be after-care clinics under the Federal Public Health Service maintained by the Federal Public Health Service to which the addict would have to report for a minimum of five years for psychiatric care, guidance, and treatment...no narcotics given. And if a doctor found that the individual had returned to the use of narcotic, they would have to report it to the judge in writing and the judge would revoke the probation, and the process would start all over again.

The Federal Public Health Service is willing to accept this. I've discussed it in detail with the head of the federal hospitals, Dr. Kenneth Nelson in Washington. But we can't get it out of Committee because a lot of people are running around trying to do something about narcotics and yet they miss the chance of doing something on these particular bills and you gentlemen can do a great deal.

The fifth thing and this is my pet peeve..and you could do something on this line too, and this is, the government in Washington...stop giving foreign aid, guns, food, ammunition, money to every country in the world that refuses to enter into written, workable agreements with this country for the control of the production of opium in those countries.

There is now in the United Nations a wonderful agreement that has been drawn up called the 1953 Protocol. But it provides that countries that sign it will have to give up the production of opium and the United Nations would have the power to send a team into that country to find out if they are obeying the rules. And do you know the country that has caused the most trouble about it and won't sign it...your neighbor, Mexico. They refuse to sign it because they don't want anybody to come into Mexico and find out how much opium they are growing...and right over the border down here. Is it any wonder you have a terrible narcotic problem in this state when you are on a border with the country that is in the business of producing it?

I could go on and on on this subject because I have spent a lot of time in it and if you have any questions or if I could be of any service in answering them, I'll try to.

CHAIRMAN CRAWFORD: First of all, Mr. Neeb, for

your information where we had seen one another before, we defended co-defendants in the federal court in San Diego at one time...

MR. NEEB: Oh, yes, now I know...narcotics case, too. I remember now.

CHAIRMAN CRAWFORD: I have one question. As you no doubt know Ohio, Oklahoma, and Louisiana have placed very severe penalties.

MR. NEEB: Yes, they have.

CHAIRMAN CRAWFORD: And as a result, their addiction rate as well as their crime rate has dropped considerably.

MR. NEEB: Yes, it happened in Maryland, New Jersey, Pennsylvania, and New York too. Not so much in New York, but the first three. Then you don't have much addiction problem in the southern states because they have the chain gang down there, but there's a difference. Ohio and Oklahoma and these other states don't have a long open border with a foreign country that's in the business of producing opium.

CHAIRMAN CRAWFORD: Don't you think that if we had severe penalties that were enforced that perhaps even though we wouldn't cure the addict, we might drive them out of California?

MR. NEEB: No, I don't think so. I think severe penalties are one of the weapons, but too often we search for the thing to cure the narcotic problem and while we search we know we'll never find it because there isn't any one thing. There are a number of things all of which playing a small part could solve the problem. But if you spend your time and your thoughts on toughness of penalty, you do not see the whole picture, you only see a part of it.

I agree with you that you can't be namby-pamby about narcotics cases and I'm not sure that any judge on the bench here is, but on these striking the priors, now I've handled criminal cases for many years and I know that there are cases where priors are really not priors at all. The mere fact that the prosecution urges it, doesn't make it a prior. Sometimes they are not priors. They may be out-of-state cases where they wouldn't be an offense in this case. They are not true priors. There may be a case where the person has gone in and made a motion under 1203.4 of the Penal Code and been relieved of all penalties and disabilities. That's in our Code and has been in the Penal Code for many, many years. If you prevented a judge from taking into account these things, you would destroy that Section and that Section has done much good for many citizens in this state who have rehabilitated themselves and lived a good life because you have to realize, gentlemen, that in law enforcement the whole meat of the nut is not punishment. It's punishment and rehabilitation and if you take away the judge's right to look into every case

and give a little leniency where it may be necessary, because of the circumstances, you won't have judges. You will move away from democracy. We have moved away from it quite a ways now..let us not go any farther.

CHAIRMAN CRAWFORD: Mr. Allen, do you have a question?

ASSEMBLYMAN ALLEN: Do you think a man is getting rehabilitated who on a second narcotics offense is sent to the county jail for a few months?

MR. NEEB: I don't think incarceration, county jail, state prison, or anywhere cures an addict. That is where we fall down. We need hospitals. We do not have them. Vacaville is small. It's an experimental thing and it is doing a good job. That is why, if we could give a judge the right, maybe, he's a third timer, let him send him to a federal hospital where he would have to stay.

By the way, the third bill I didn't mention provides for a new federal narcotics hospital to be built out here and run by the Federal Public Health Service.

But directly answering your question, you don't cure anybody of addiction because of this fact...narcotic addiction is twofold. It's difficult, but you can cure by simply keeping them off the narcotics. But it is also mental and after he is released, unless he has after-care for a long period of time, he will return. The reason the addict returns and becomes a second offender or a third offender is because he goes back when he is released to the same environment, the same pressures, the same phobias that caused him to become addicted in the first place.

ASSEMBLYMAN ALLEN: You don't favor the use of prison for a sentence of possession then?

MR. NEEB: The crime, yes. But it doesn't do any good as far as the addict is concerned and you very seldom, in this state, get a peddler that's not an addict. Because you don't reach that high. You see, the big-time peddlers do not even exist in this country. They're the bank roll that run the show. Or if they do exist in this country, they never touch any type of narcotic, they never possess it...you never reach that high. That's why you have to turn it off at the source... Or you'll have this problem if you had a meeting scheduled ten years from today and you came back here and you didn't attack this on an international level, you would have the same problem as you have today only it would be worse. I don't mean to be pessimistic, but it is a gigantic problem.

CHAIRMAN CRAWFORD: Thank you. Mr. Cook. Do you have a question?

MR. COOK: Yes. Mr. Neeb, if you went to Mexico to the State of Sinaloa, I believe, could you buy, yourself, all the opium or heroin that you had money for?

MR. NEEB: I don't know where Sinaloa is. I went to Baja California, that's the new state.

MR. COOK: Yes, it's further down. Have you had experience in Mexico in contacting persons who might sell narcotics?

MR. NEEB: I can tell you this. I went over the border the last time and contacted some Mexican people in the newspaper business who knew their way around and they said, "We are not going to make any buys, but we'll introduce you to the peddlers," and I met them and I'll tell you where the distribution points are.

In the city of Tiajuana, it is divided into four areas and there is a vice-lord over each of the four areas and the distribution points are largely the houses of prostitution. There are 40 of them running wide open across the border now, and I was in a great many of them and I have seen children working..as young as 12 years of age...in the houses of prostitution across the border. The Attorney General of California had a meeting in San Diego and he invited the officials of Lower California to come up and talk to the officials of this state and they came and they promised to clean it up. They promised to abolish these houses of prostitution and places where you could buy narcotics. They promised to close the stores that were selling pornographic literature. They closed the store, but now the taxicab drivers...all you've got to do now is to get in a taxi cab and tell them what you want and off into the night you go and you get it. Your question is, could you buy narcotics...yes.

MR. COOK: I am thinking about purchasing narcotics on a wide or large scale.

MR. NEEB: You couldn't do it unless you were in the know and part of the gang. Or you'd probably get into trouble, seriously. But you don't have to buy it and bring it back, you know, because you go down there, they have shooting galleries where you can go and have a shot and then come back and go back the next day...no control at all.

MR. CRAWFORD: Thank you. If there are no other questions, thank you, Mr. Neeb, for appearing here today.

We will take a short recess until Justice Fourt arrives...he is due here in the next few minutes.

Do you have a statement that you would like to give to us, Judge?

JUDGE FOURT:

WALTER A. FOURT
Justice, Second Court
of Appeals
Los Angeles, California

No, I didn't contemplate nor calculate that you gentlemen would want a statement from me at this time. I'm prepared, however, at least I think I am, prepared to answer any questions that you might have or might want to put with reference to this general overall situation.

CHAIRMAN CRAWFORD: Judge, for our information, we would like to have you comment upon the practice of several Los Angeles Superior Court Judges of striking prior records and sentencing narcotic addicts, or pushers, or narcotic offenders, or of ignoring them completely, making no finding whatsoever on the prior.

JUDGE FOURT: Taking it in reverse order. Taking up first the matter of failing to act upon the prior, I find that nothing whatsoever in the law either statutorily-wise or casebook-wise where any judge has any authority whatsoever to fail or to neglect to pass upon an issue which is before him. And if a judge fails and neglects to pass upon the question of the prior, it seems to me that he is just simply failing to determine and to dispose of one of the issues in the case.

As I recollect it, there is a specific code section that provides that when the matter is tried by a jury that the jury must find as to the truth or falsity of the prior. It would seem to me certainly that it would be an anomoly to say that a jury must find, but that the judge doesn't necessarily have to find. If that be the fact, or if that be the case, then you have an anomolous situtation again because a defendant would have a situation where he could demand a jury, the jury would have to find upon the matter of the prior wheras if he waived the jury and had a trial before the Court, he could at least take the gamble, or the risk, or the hazard, or the chance that the judge might not find upon it. I don't think our criminal jurisprudence is based upon any such fundamentals as that, or lack of fundamentals.

With reference to the lack of finding the truth or falsity, or the striking of priors rather, I know nothing of the situation as it is handled in Los Angeles County other than those cases which have come to this Court. By this Court, I mean the Court of which I am a member. And in those instances, just as I said in the case of People v Barbera, I believe it was, in many, many, many cases the record discloses that the judges in this county failed to either act upon the prior or struck the prior after finding that the prior was true.

As I see it, you have only the power or the authority to do that under Section, I think it is, 1385, I haven't checked

it recently, but I think that's the section. As I read the section, and as I read the cases which have interpreted it, a judge can only do that in the instance where it is in the furtherance of justice. In other words, it is limited where a judge can do that and then there is a further condition...namely, that the judge must set forth the reasons for striking the prior. Although it doesn't say striking the prior because I think when 1385 was passed no one ever contemplated--in the Legislature when that section was passed, that it would be used for the purposes of striking prior convictions. Insofar as I know it never came up until People v Burke was determined by the Supreme Court.

But not in one single solitary instance that I am able to find of any case on appeal has any judge ever set forth in the minutes the reasons for striking the prior. They have set forth the limitation, namely, that it's been in the furtherance of justice and you gentlemen all I think connected with the law business know that is nothing but a conclusion. There isn't any fact stated. There's no reasons given when you just simply say in furtherance of justice. It means nothing. In not one instance that I can find has there ever been a reason even set forth in the minutes.

In many instances you can refer to the reporter's transcript and what would purport to be a reason is set forth in the transcript. Such as, for example, I'm going to give you a break. Well, that obviously isn't a reason. It seems to me that the only purpose of that section, assuming that it means what People v Burke says it means, that it is a legal discretion that has to be exercised. It isn't an arbitrary discretion. You can't say, well, this man is baldheaded and no baldheaded man should go to prison if he has a prior conviction. There has to be some good and sufficient reason.

Perhaps, I feel strongly about it...these narcotic people, but as I view it you can't treat narcotic peddlers, you can't treat narcotic users the same as you treat other offenders. In other words, you take a kidnapper...a kidnapper doesn't induce other people to become kidnappers. Neither does a robber induce other people to become robbers.

I know of very few instances where a narcotic peddler, or a narcotic user, hasn't some time or another gotten someone else to use the narcotic, and I think the history of the whole business is that one will induce another and another and another and it becomes a vicious circle. And it has agitated me no end to see narcotic peddlers and narcotic users treated as though they were first offenders when in truth and in fact they have records of many prior convictions, felonies, and other offenses and particularly narcotic offenses.

Many times judges have released defendants apparently under the guise or pretense that they were doing them a favor and secondly, that by treating them as first offenders, they were doing what the Adult Authority had suggested or requested that they do to the end that the Adult Authority would have

greater liberality in disposing of those people when they go to prison.

I don't ever recollect in the bill setting up the Department of Corrections, anything whatsoever at any time that even would indicate that the Adult Authority was to have the power that some of the judges have indicated that they now do have.

I think that I can speak rather certainly and rather positively about that because I'm not bragging about it although I think it's a pretty good bill--I was the main author of the bill that set up the Adult Authority and it was done through the cooperation of the then Governor and the then Attorney General. We had a special session of the Legislature for that one purpose. I was the leadoff author and handled and conducted all of the hearings with reference to it and the Committee of the Whole, so I think I know something about the Department of Corrections and I know that at that time, having written a large part of the bill, that there was never any thought that the Adult Authority would be put in the position that they presently apparently are put in by what I've read in the press.

I don't know whether it's true or not. I know it was never contemplated that the Adult Authority would have the power directly, or indirectly, to suggest to trial judges that they should impose lesser sentences upon defendants that came before them to the end that the Adult Authority would have greater leeway in the disposition of their cases. And incidentally, in that connection, if they have that authority or that power, it would seem to me that they should exercise it uniformly and I've taken it upon myself to check in the counties other than Los Angeles County and this Appellate District, and so far as I can find by a discussion with all of the judges, no judge other than the judges in Los Angeles County has ever been contacted directly or indirectly by any member of the Adult Authority with reference to this subject matter. Now, if that be the case, then what it means is that a defendant from Santa Barbara, San Luis Obispo or Ventura County is treated differently than a defendant from Los Angeles County, assuming that they have the same identical record and the same identical offense with which they are presently charged and when they go to Chino, the one is there as a minimum offender and the other is there as a recidivism.

I can't image of anything that would be more unjust than that or would make for more maladministration in a prison than to have two people lodged in the same cell charged with identically the same offense and with the identical background and one doing a minimum of five years and the other one doing a minimum of a much, much lesser term because the Adult Authority contacted the judge in one county and didn't contact him in another.

I would prefer, as far as I'm concerned to just answer any questions about it because I didn't come here prepared to make any statement.

CHAIRMAN CRAWFORD: Thank you, Judge, Do you have any questions, Mr. Allen?

ASSEMBLYMAN ALLEN: Only one question. That is, whether you have an opinion and if so what it is on the basic policy question of whether the legislative framework on these penalties in narcotics cases should be such as mandatory, that second offenders get the more severe penalty with statutory minimum sentencing to state prison and no probation. That is the basic policy we're talking about...whether that should be effective completely or we should allow some variation of that?

JUDGE FOURT: Having been in the Legislature myself, and having been on the trial bench and now being in this job, I'm convinced beyond any question whatsoever that it is a matter of legislative policy and it ought to be up to the Legislature to determine definitely and positively and unequivocally what the penalty should be particularly in this matter of narcotic offenders and as I have read the statutes, I think that's what the Legislature had in mind the last several years. At least at each session, they have increased the penalties. I think they've done that for the very reason that they've looked into the problem, they've consulted with their own people in their own districts and so forth and they get the pulse, so to speak, of their political subdivision and they think that that's what should be done and I think so too.

If judges are going to use some device, or some plan, or some scheme by which they don't do what the Legislature has directed, then I think the Legislature should spell it out in a crystal clear sort of fashion that the minimum penalty shall be such and such and that in this particular case, there will be no probation, there will be no suspension, there will be no parole, and that there will be no striking of priors and so forth. In other words, spell it out if that's what it has to be and I think that that's the way it should be.

Frankly, if you take the Federal setup and you take the setup as it is in Louisiana, I believe, and Ohio and several other states, they've demonstrated beyond a question of doubt that maximum severe penalties to narcotic peddlers and narcotic users are extremely effective in doing away with the menace.

Obviously you can't turn an addict out into an area where they can get narcotics. It is just as simple as that. The poor fellow gets out of prison and in a matter of 15 or 18 months, he goes right back into an area where he is confronted with his old associates. Obviously the peddler says to him, "Well, how are you, Bill. Have a shot on me."...and so forth. and the first thing you know he's right back using the stuff or right back selling it. If you have a narcotic-free area that you can turn him loose in, then you have some possibility of a chance maybe, but otherwise, it's a stupid thing, wastes the political subdivision's money and wastes human lives.

CHAIRMAN CRAWFORD: Mr. Cook has a question.

MR. COOK: Justice Fourt, is it your opinion then that AB 751, which I am sure you are familiar with, should be strengthened so that it should specifically state that a trial judge should not have the discretion to strike or dismiss a prior on its own motion?

JUDGE FOURT: Yes. Now, I just sat down...oh, I think it was last night as a matter of fact, thinking about this...I would have added to 751 some such language as this: "The Court shall not upon its own motion be permitted to dismiss a complaint, an indictment, or information, or of any counter allegation therein. Whenever the fact of the previous conviction of another offense is charged in an indictment or information, the court, if it finds the defendant guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge of the prior conviction and if it is found that such a charge of a previous conviction is true, or if the defendant admits the previous charge, the court shall have no power to strike such prior conviction, or fail to consider such prior conviction in the sentencing of such defendant.

I don't think anybody would be able to say some of the things that the records disclose that have been said in cases right here in Los Angeles County. I guess I don't have them with me here now. The phrases to the effect, "I'm going to give you a good break and so forth. It this were over in the federal court, you do 20 years, but here it is going to be considerably less than that," or such language as, "The Adult Authority has requested that we do this so that there will be greater liberality in disposing of these matters and you won't have to do the minimum time that the legislature has imposed.:

I don't mind saying that I don't like it when any judge says in effect, "I'm going to make an order so as to get around a legislative enactment." I think it is the legislators' duty and I think they perform that duty in the passing of our laws. I don't think a court should take it upon itself to devise ways and means of getting around them, or under them, or any other way other than go right straight into it. And if they don't like the law, if I don't like it, I know what I can do...I can either quit being a judge or I can go up to the Legislature and attempt to get it changed. That's the way to go about it.

In the case of People v. Collins, he was charged with heroin matter, he had a counterfeiting prior, a man act of prior and the selling of heroin prior. So he had three prior convictions. The court stated, "Well, you have a problem with narcotics and you have had it for about 24 years. You have used it, and you have sold it. I think you are addicted to it. I think you are addicted to it now. One who uses it is very apt to also sell it in order to support the habit. You obviously didn't learn your lesson. Now the court is purposely not making any finding as to the three priors in order to give the Adult Authority greater latitude in handling your case." Now, when the Legislature spelled it out that you have a prior, it shall be alleged, and if you have a prior, you shall do a minimum period of time.....Here is a man with three priors, and the judge says, "Well, I am not going to find on him, so you can go there in substance as a minimum sentence.

The next one, a man was charged with two counts of the sale of heroin. Also charged were two prior convictions of some sort of a felony. The judge set the time of sentencing, and "Well, the bar he was running was a known place where such narcotics were being sold. You have two priors. If you were appearing before the federal court you might get 20 years in prison for this. It is a very serious offense. We do everything in our power to stamp out the use of narcotics." We have no sympathy whatsoever with him. "Now the court is purposely not making any determination as to the prior in order to give you a break and the Adult Authority greater leeway in the manner in which they are going to dispose of your matter."..now, that in the face of a legislative enactment that it shall not be done.

Next one, it says, "Very fortunately for you that you didn't make this sale to a federal officer. The court makes no finding on the prior convictions. You are not an addict, you were just selling the stuff." Those matters I don't agree with.

ASSEMBLYMAN ALLEN: What was the name of the last case. The last two cases?

JUDGE FOURT: The last was apparently People v Patterson, charged with burglary and heroin prior and he was charged with possession of heroin at the time. The next one was People v Perez and Revera, I guess you pronounce it. I don't know whether those cases are out on A.C.A.'s yet or not. They are still upstairs in the clerk's office.

CHAIRMAN CRAWFORD: Mr. Cook, will you see if you can get minute entries on those two cases and citations for us?

We want to thank you for appearing here today, Judge Fourt...due to your wide experience both as a legislator and trial judge and as a justice in the court of appeals. We certainly appreciate your taking time to come down here.

JUDGE FOURT: I'm sorry for being late.

CHAIRMAN CRAWFORD: That's all right. At this time I want to thank all of the witnesses who have appeared here today and also to thank the press for the fine coverage which they have given our hearing.

The next hearing of this Subcommittee will be in San Diego.

Mr. Ousley before I close, I would like to have you submit to our consultant a document which sets forth the basis for your figures which were submitted. Well, unfortunately, I'm going to have to close this meeting, that is why I'm asking you to submit the written document to us setting forth the basis for these statistics.

The next meeting of the Subcommittee will be in San Diego. The date has not yet been determined. I want to thank all of you for being here. The meeting is closed.

The meeting adjourned at 4:45 P.M.

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